INSPECTOR'S REPORT

on the

October 18, 2004 City of Calgary Ward 10 Election

June 22, 2005

Robert C. Clark, Inspector

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LETTER OF TRANSMITTAL

Hon. Rob Renner
Minister of Municipal Affairs
#227 Legislature Building
10800 97 Avenue N.W.
Edmonton AB T5K 2B6

June 22, 2005

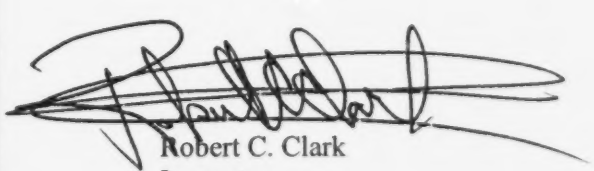
Dear Mr. Minister:

I have the honour to submit my report on the Inspection of the 2004 Calgary Ward 10 election. The report includes my findings as well as recommendations which I am providing for your consideration. I have opted to prepare a policy-oriented report. I could obscure the major issues which I think you need to consider with an extended review of details presented to me. I do not think that the public interest would be served by doing that.

I agreed to the appointment as Inspector because I believed that the public wanted to know, and had a right to know, what happened in the 2004 Ward 10 election – what irregularities occurred and who committed them. Unfortunately my ability to fulfill these expectations has been limited by the serving of Summons identifying charges under the *Local Authorities Election Act,* and the interpretation of my terms of reference offered by the Honourable Mr. Justice Scott Brooker of the Court of Queen's Bench. I regret this very much since, in my view, the actions of a few individuals have called into question the integrity of the local election process across the province. I can only express my fervent hope that the Calgary Police Service and Alberta Justice will be diligent in that respect.

I have been able to determine, however, how the opportunity to request, complete and submit multiple Special Ballots, in the name of unknowing electors, became available to those responsible for this scheme. I am hopeful that my recommendations will assist with the future administration and security of the local authority election process in Alberta.

Yours truly,



Robert C. Clark
Inspector

EXECUTIVE SUMMARY

The Clark Inspection has been delegated the role of investigating a municipal election in which principles held dear in democratic societies, developed over centuries, have been challenged. The notion that we are governed by persons chosen through the will of the people, in properly administered elections with votes of equal value, has been brought under attack. I have spent 40 years of my life involved in Alberta politics of one nature or another, and the proper and secure administration of elections in this province is a matter which I hold to be of immeasurable importance. The Clark Inspection has accepted a public trust to investigate an alleged election irregularity, and make consequential findings and recommendations, and this report is an attempt to fulfill these important objectives.

A significant irregularity occurred in the 2004 Calgary Ward 10 election. The irregularity involved the application for and return of Special Ballots using the names of persons who did not know that this was taking place. It was an unsuccessful attempt at computer assisted ballot box stuffing, made possible by innovations pursued by the City of Calgary to allow requests from qualified electors for special mail-in ballots through a City website. The irregularity was not the result of poor legislation, misleading information from election officials, or improper administration by City of Calgary officials. Instead, there was an organized attempt by one or more individuals to request, complete, and return Special Ballots in the name of Ward 10 residents.

A broad range of suggestions to enable appropriate participation in the democratic process, and to prevent future similar schemes from being attempted or succeeding, are provided in the recommendations. These recommendations will assist with effective administration and security of local authority elections in Alberta.

RECOMMENDATIONS

1. **The use of Special Ballots in local authority elections in Alberta should be continued. If the City of Calgary wishes, Calgary's election regulation should continue to authorize website applications for Special Ballots.**
2. **The *Local Authorities Election Act* should be amended to provide that an elector may be required to provide two pieces of identification when asking to be included in he register or list of electors, requesting a Special Ballot, or swearing in at the voting station.**

3. The Alberta Municipal Affairs Election Manual should be expanded to provide guidance for municipalities on procedures related to the use of Special Ballots. In particular, this guidance should clarify

   (a) that a Special Ballot package is required to be issued when the Returning Officer receives a valid application, and

   (b) procedures to be followed regarding multiple applications for Special Ballots to be sent to the same address.

4. Elections Alberta should consult with Alberta Municipal Affairs and local authority election officials on discussions with Elections Canada and other jurisdictions regarding sharing information to produce a common register of electors, with the objective of producing a common register of electors for use in all elections in Alberta.

5. The *Local Authorities Election Act* should be amended to provide that a person who is convicted of an offence related to a controverted election under the *Act* is not eligible for nomination for a local authority elected position for 10 years after the date of the conviction, and a consequential amendment should be made to prohibit nomination under the *Election Act* for the same period.

6. The optional procedures offered by Section 84 and Section 160 of the *Local Authorities Election Act* should be continued.

7. Section 77.1(2) should be amended to permit applications by email.

8. Section 86 of the *Local Authorities Election Act* should specify the authority of Returning Officers to reject a ballot which it would be an offence to count under section 149(a)

9. The offence provisions should be reviewed to ensure that they are appropriate each time a new election process is introduced.

10. Alberta Municipal Affairs should consult with local authority election officials and Elections Alberta throughout the drafting of amendments to the *Local Authorities Election Act.*

11. Alberta Municipal Affairs should work with Elections Alberta to develop common terminology to be used in the statutes and regulations governing both provincial and local elections

12. Alberta Municipal Affairs should consult with Elections Alberta to ensure that the same interpretations are given by both to commonly worded provisions of the *Local Authorities Election Act* and the *Election Act.*

13. Alberta Municipal Affairs and Elections Alberta should encourage local authority Returning Officers and provincial Returning Officers to work together to designate locations to be used as voting stations/polling places for all provincial and local elections. Elections Alberta should work with Elections Canada to have the same locations used for federal elections.

14. A way should be found to increase the number of election workers who have facility in languages used by electors in areas where a language other than English is in common use.

15. Alberta Municipal Affairs and Elections Alberta should work with groups like the Ethno-Cultural Council of Calgary to develop educational materials and deliver ongoing education workshops in appropriate languages to inform immigrants on the (municipal and provincial) democratic process in Alberta and develop similar advertising material for use at election times.

16. The City of Calgary should increase the size of the certificate envelope used for Special Ballot applications in order to make it easier for electors to read.

PRE-INSPECTION INFORMATION

The following is a description of the events which led up to my appointment as Inspector to inspect the October 2004 Calgary Ward 10 election. The story begins with the 2003 amendments to the *Local Authorities Election Act*[1] allowing Special (sometimes called mail-in) Ballots for the first time in local elections. It ends with amendments to the Calgary Election Regulation on January 27, 2005. A review of the 2003 amendments to the *Local Authorities Election Act* and the adoption of the City of Calgary Election Regulation is provided in APPENDIX A.

Under the Calgary Election Regulation, an application for a Special Ballot was to be made

(a) in writing,
(b) by telephone,
(c) by telecopier,
(d) electronically on-line through the City of Calgary website,
or
(e) in person.

The Special Ballot package could either be picked up at the Returning Officer's office or mailed to the elector. The completed documents had to be returned to the office by the close of the polls on election day.

In February, 2004, the City of Calgary Information Technology team began development of the Special Ballot web registration system. The system became operational on July 1. Electors could request a Special Ballot by going to the City of Calgary website (http://www.calgary.ca) and navigating to the Election Mail-In (Special) Ballots web page.

There were four sequential web pages involved:

Page 1 – elector indicates name, city[2], reason for request
Page 2 – elector provides school support, contact, residential address, mailing address and ballot pickup information
Page 3 – verification page
Page 4 – confirmation page

The system verified the address information against the census database and the POSSE address recognition program and then automatically posted it in the Special Ballot database. Requests received by mail, telephone, fax or in person were manually entered into the database.

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[1] R.S.A. 2000, c. L-21
[2] This is required because the City of Calgary administers elections for Separate School Board trustees in rural areas extending outside the boundaries of the City.

The first application for a Special Ballot was received on July 8. Three applications were received in July, 25 in August, and 10 were received to September 8. The receipt pattern for the following days was:

DATE	Total Requests Received	WARD 10	Rest of City	DATE	Total Requests Received	WARD 10	Rest of City
SEPTEMBER				OCTOBER			
9	73	1	72	1	167	144	23
10	31		31	2	470	440	30
11	1		1	3	375	354	21
12	1		1	4	47	3	44
13	2		2	5	82	32	50
14	15	3	12	6	165	86	79
15	5		5	7	59	4	55
16	6		6	8	27	8	19
17	2	1	1	9	9	4	5
18	2		2	10	9	3	6
19	2		2	11	4		4
20	20	1	19	12	33		33
21	16	1	15	13	14	2	12
22	46		46	14	18		18
23	27		27	15	12		12
24	22		22	16	1		1
25	7		7	17	1		1
26	6		6	18	32	1	31
27	82	27	55				0
28	52	1	51				0
29	52	34	17				0
30	182	142	40				0
				TOTAL	2176	1292	884

The 82 applications for Special Ballots received on September 27 included 27 applications from Ward 10 electors. 24 of these applications requested that the package be mailed to the same address and did not indicate school support. This was unusual and prompted the Presiding Deputy Returning Officer (PDRO) for Special Ballots, Barbara Webb, to begin monitoring Ward 10 applications. A staff member was sent to check the address to which these Special Ballots were to be sent (Suite 307, 204-1440 52 Street N.E.) and reported that it was a commercial mailbox located in a Mail Boxes Etc. store located in the TransCanada Mall. The "suite number" was actually the number of the large mailbox.

From September 29 to October 3, 1,080 applications were received requesting the Special Ballot package for Ward 10. All but 6 of these requested that the package be sent to the "Suite 307" address. Most were coded "3" meaning the reason for applying was because the applicant would be unable to vote on election day or at the advance polls because he or she was working as an election official or as a candidate's agent on election day. Most did not indicate school support.

On October 3 a "production incident" occurred with the system. When it was requested to register two records entered at precisely the same time, a deadlock ensued resulting in an error report. Information Technology staff investigating this incident noted that many more records than would normally be expected were entered during the time period with only seconds between the entries. The requests were all from Ward 10, had similar names, and requested that the packages be sent to the same address.

On October 6 a second "production incident" occurred when the sheer volume of Ward 10 requests received that day, which far exceed the design capacity of the system, resulted in the failure of the update of the "Certificate Mailed Date" portion of the database. Consequently on October 7 the Election Office ran the certificate print job again, duplicating 965 envelopes. 684 of these were mailed before the error was discovered.

When elections staff reported to work on October 7, 20 to 30 envelopes were found on the floor, having been dropped through "video return slot" by the front door of the office. On October 12 approximately 500 envelopes were discovered when staff reported to work. An additional 200-300 envelopes were discovered on October 15. The only Special Ballot envelopes returned via the mail slot overnight to the Election Office were Ward 10 ballots.

On the evening of October 13, four election staff attempted to contact electors in whose name Special Ballots had been returned. The staff member calling was instructed to indicate that the Special Ballot had been cast in the elector's name and that the staff member wanted to confirm the name and address. Responses were received regarding 35 persons: 2 said they had requested ballots, 32 said they didn't vote that way, and one person didn't know.

On October 14, the Returning Officer, Barbara Clifford, contacted the City Law Department to consult as to steps to be taken in relation to the apparently irregular Suite 307 Ward 10 Special Ballots. The Law Department in turn contacted Corporate Security. Corporate Security informed Commercial Crime and Arson of the Calgary Police Service. The Returning Officer also informed Alberta Municipal Affairs of this issue.

Ultimately, of 1,266 Special Ballot packages mailed to Ward 10 residents in care of "Suite 307". 851 of these were eventually submitted to the Returning Office.

694 were rejected because the certificate envelope had not been completed properly. The Returning Officer, pursuant to the authority granted by Section 7(5)(b) of AR 31/2004, decided that the remaining 157 ballots received would be marked rejected, and overriding the preliminary decision of Special Ballot PDRO Ms. Webb. They were not opened and were not counted. In addition, the 25 duplicate ballots (originating from the second production incident) were also rejected and not counted. This left 20 valid Special Ballots to be counted in the Ward 10 Special Ballot voting station.

A summary of the disposition of the Ward 10 Special Ballots is as follows:

	Issued	**Returned**	**Not Returned**	**Rejected**
Other Addresses	26	20	6	
Mailboxes, etc.	1266	851	415	851
Duplicates	684	25	659	25

When all of the votes were counted, the results of the October 18, 2004, Ward 10 aldermanic election were

Candidate Name	**Total Votes**
Aftergood, Margot	2072
Berard, Brad	254
Chabot, Andre	979
Danielson, Diane	1934

The difference between the successful and the second place candidates, Mrs. Aftergood and Mrs. Danielson respectively, was 138 votes. The Returning Officer, therefore, called the candidates to a meeting on October 19 and subsequently informed the media of the situation surrounding the Ward 10 Special Ballots. Mrs. Aftergood, who had three times been appointed as a provincial Returning Officer, spoke to both print and electronic media on October 20, who reported that her campaign workers were responsible for the requests, after having asked the electors involved if they would like a mail-in ballot. The Calgary Police Service continued its investigation.

On October 22 Mrs. Danielson filed a request for a judicial review with the Court of Queen's Bench. On October 25, Margot Aftergood was sworn in as Alderman. On October 27 the Honourable Mr. Justice Peter Martin granted Mrs. Danielson access to voter information for Ward 10 from the City of Calgary.

On November 10, a Notice of Motion was issued in *Danielson v. The City of Calgary, Barbara Clifford and Margot Aftergood* setting out that on November 29 a trial of the issue would commence in which an order would be sought for the following remedies:

1. *That the municipal election for Alderman for Ward 10 of the City of Calgary held October 18th 2004 (the "Election"), be declared invalid pursuant to s. 137 of the Local Authorities Election Act (the "Act")*

2. *That Margot Aftergood be removed and her office vacated as Alderman for Ward 10 of the City of Calgary, pursuant to s. 138 of the Act;*

3. *That costs be paid to the applicant on a solicitor-client basis; and*

4. *Such further and other relief as this Honourable Court may deem just.*

On November 11, Calgary media reported that police had executed a search warrant at the home of Hung Pham MLA, Calgary-Montrose, which includes a portion of Ward 10. Mr. Pham told the media that the search was for computer equipment which the warrant indicated was used to make on-line requests for ballots during the October City election. Police reported that there was no evidence Mr. Pham was involved but that they believed there was evidence to be obtained at the house. On November 19 media obtained a copy of the warrant which indicated police had traced the on-line requests to two specific Internet Protocol addresses, both linked to an account at Pham's home. Mr. Pham identified the account holder as his sister-in-law who no longer lived at his home.

On November 29, the City of Calgary and Margot Aftergood reached an agreement under which Mrs. Aftergood would resign her office as Alderman for Ward 10 and the City would pay 60% of her legal costs. The same 60% offer was made to Mrs. Danielson but was not accepted. On November 30, when an agreement by Mrs. Aftergood that she was not duly elected and had no right to hold the office brought the trial to a halt, Justice Martin urged a public inquiry be held into the matter, stating that:

> "...such serious allegations of misconduct as outlined in Ms. Danielson's Notice of Motion require a public hearing where witnesses can be required to testify under oath, to ensure that our electoral system is not corrupt and cannot be corrupted, and also to discourage those who might be tempted to engage in electoral mischief in the future."

He suggested that if any of the allegations were true, "that would be a most serious matter requiring immediate redress to maintain public confidence in the integrity of our democratic electoral process".

On December 6, Calgary City Council passed a resolution requesting the Province of Alberta to convene an inquiry "into and concerning the Calgary October 2004 municipal election in Ward 10 including, but not limited to, the

conduct of all Ward 10 candidates, their campaign teams and the City of Calgary elections office".

Also on December 6, City Council set February 28, 2005, as the date for a by-election to fill the vacant Ward 10 aldermanic seat. In response to Council's request, on January 27, 2005, the Calgary Election Regulation (AR 31/2004) was amended by AR 6/2005 to delete Sections 5 to 8. Consequently Special Ballots were not used for the by-election.

APPOINTMENT OF INSPECTOR AND INSPECTION PROCESS

This section describes my appointment and the process which I used for the Inspection.

On December 14, 2004, I was appointed by the Honourable Rob Renner, Minister of Municipal Affairs, under Ministerial Order L:177/04, " ... inspector for the purposes of conducting an inspection regarding the election process in the City of Calgary."

Section 571 of the *Municipal Government Act*[3], under which I was appointed, provides as follows:

571(1) The Minister may require any matter connected with the management, administration or operation of any municipality or any assessment prepared under Part 9 to be inspected
(a) *on the Minister's initiative, or*
(b) *on the request of the council of the municipality.*

(2) The Minister may appoint one or more persons as inspectors for the purpose of carrying out inspections under this section.

(3) An inspector
(a) *may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection, and*
(b) *has the same powers, privileges and immunities as a commissioner under the Public Inquiries Act.*

(4) When required to do so by an inspector, the chief administrative officer of the municipality must produce for examination and inspection all books and records of the municipality.

[3] R.S.A. 2000, c. M-26

(5) After the completion of the inspection, the inspector must make a report to the Minister and, if the inspection was made at the request of a council, to the council.

On December 29, 2004, by Ministerial Order L:182/04, the Minister set out the following terms of reference for the inspection:

> Whereas it is deemed appropriate to carry out an inspection regarding the municipal election conducted in the City of Calgary on October 18, 2004, the municipal election process in the City of Calgary and matters arising therefrom (the "Inspection");
>
> And whereas there is an ongoing investigation by police authorities of alleged controventions of the *Local Authorities Election Act* and the *Criminal Code*;
>
> And whereas the municipal inspection is to deal with matters not dealt with by the police authorities;
>
> And whereas an inspector has been appointed and shall perform an inspection in accordance with section 571 of the Municipal Government Act (the "Inspector"). Under section 571 an inspector may require the attendance of any officer of the municipality or of any other person whose presence the inspector considers necessary during the course of the inspection, and has the same powers, privileges and immunities as a commissioner under the Public Inquiries Act. Also, when required to do so by an inspector, the chief administrative officer of the municipality must produce for examination and inspection all books and records of the municipality as appropriate.
>
> The Inspector shall inspect the election process and related activities prior to and following the election in the City of Calgary with a specific focus on Ward 10, including:
>
> 1. the identification and clarification of irregularities which occurred or which were perceived to have occurred in the election process;
> 2. the factors contributing to, and circumstances connected with, irregularities or perceived irregularities in the election process;
> 3. the adequacy of the existing provincial and City of Calgary legislation, regulations, by-laws, rules and standards governing the conduct of elections, insofar as they relate to the election process;
> 4. the performance of all municipal officials and staff involved in the conduct of the election process;
> 5. the performance of the IT system and programs used in the conduct of the election process;

6. the steps that can reasonably be taken to reduce or eliminate the risk of recurrence of any irregularities in the election process; and
7. any matters incidental or relating to any of the matters referred to in items 1 to 6.

The Inspector's report shall be released to the public by the Minister of Municipal Affairs.

The Inspector shall refer anything regarding possible criminal or *Local Authorities Election Act* offences discovered in the course of the Inspection to the police authorities. If such evidence is turned over to the police, this shall be noted in the Inspector's report, but only in general terms to ensure that the police investigation will not be inhibited and to ensure that each affected individual's privacy is appropriately protected.

Notwithstanding the foregoing, every witness to the Inspection, in relation to their testimony provided to the Inspector in public or private and documents produced as evidence in the Inspection, shall be afforded the protection of the law including the Canadian Charter of Rights and Freedoms.

The Inspector's report shall address and recommend on the following specific issues, as well as any other matters the Inspector deems appropriate:

1. the factors contributing to, and circumstances connected with, the irregularities which occurred in the City of Calgary's October 18, 2004 election process.
2. the appropriateness of the provisions of the *Local Authorities Election Act* and the Calgary Election Regulation (Alberta Regulation 31/2004), particularly in regards to the following:
   a. the Special Ballot provisions for local authority elections;
   b. the voter identification requirements for local authority elections;
   c. the Returning Officer's authority to decide on and deal with alleged controventions of the Local Authorities Election Act and the Calgary Election Regulation; and
   d. the provisions that deal with the campaign process, including its fairness and transparency.
3. the appropriateness of the design and operation of City of Calgary website(s) that was used as the vehicle(s) to issue the Special Ballots, including the security of the system(s);
4. the appropriateness of the training provided to the IT staff who developed the website and of the training provided to the City of Calgary election officials, particularly the staff receiving the requests for Special Ballots on the website;

5. the appropriateness of the process used by the City of Calgary to cross-reference between the Special Ballot requests and the voter cards identified in section 2 of the Calgary Election Regulation;
6. the performance of all municipal officials and staff involved in the conduct of the election process and the performance of the IT system and programs used in the election process; and
7. what if any changes are recommended to the Local Authorities Election Act, the Calgary Election Regulation, and the City of Calgary's election policies, procedures, and processes to reduce the risk of irregularities in the election process.

While the terms of reference refer to the "municipal election conducted in the City of Calgary on October 18, 2004" and "the election process and related activities prior to and following the election in the City of Calgary with a specific focus on Ward 10", my report focuses on the aldermanic election. There has been no indication of any kind that school board elections were under question or that any mayoralty campaign was involved in the identified irregularity.

I appointed David Wachowich, a partner at Fraser Milner Casgrain, as Inspection Counsel and Tom Forgrave, a former Alberta Municipal Affairs Assistant Deputy Minister as Executive Secretary. Alberta Municipal Affairs arranged office accommodation at 2460 Monenco Tower, 801 – 6th Avenue S.W., Calgary, and for administrative assistance to be provided by Amanda Hawkins. I contracted with Randy Edwards, Professional Systems Ltd., to provide advice on the systems-related portion of the terms of reference. Mr. Edwards has developed elections-related systems for Elections Alberta, Elections Nunavut, and Elections Northwest Territories.

At a media conference on January 24, I explained that while the by-election process was underway, the Inspection team would be planning its approach and doing background research and investigations. I issued an invitation that "… anyone, particularly any elector from Ward 10, who has something to contribute should call us at 355-4261". As noted at the media conference, the Clark Inspection recognized that, like many commissions, it received a mandate which had both fact finding and policy making aspects, though the scale and scope of the Inspection was not one that approached those of many Royal Commissions, Public Inquiries, and Inspections that had been initiated in Alberta, and in Canada, in the past. I also referred to the statements of Mr. Justice Martin in interpreting the scope of the terms of reference I received from the Minister of Municipal Affairs, and in determining my procedure.

I also indicated my intention to hold "public sessions March 21 to 24, and April 11 to 15, to hear witnesses who, on the basis of our investigations, have information most relevant to the issues set out in the terms of reference." Holding portions of the inspection process by public hearing, in the nature of a public inquiry, was new as the 13 inspections since 1995 had been conducted without a public

hearing component. This innovation brought with it obligations of procedural fairness to those involved, but primarily was consistent with my commitment to the principle of transparency. As has been noted in court applications since regarding my process, I could have theoretically conducted my entire investigations in private but wanted Calgarians to be able to see what I was doing, and draw their own conclusions as the process unfolded. I believe that objective has been fulfilled. In the course of this Inspection, and particularly during the public hearings, the Calgary print and electronic media have been of great assistance in keeping Calgarians informed.

Finally, at the media conference I explained that the final step in the Inspection would be preparing this report, to be submitted to you by June 30, 2005.

As the background research and investigation proceeded, I concluded that to fulfill my mandate I would need to determine what happened in the October 18 Ward 10 election and how it happened. I also wanted to determine what gave rise to the City of Calgary settlement offer related to the *Danielson* action, including the resignation of Margot Aftergood as Ward 10 Alderman, since that avoided a trial which otherwise may have answered these questions. It became apparent that a third public session would be advisable to deal with the latter issue and to hear final submissions. I also determined that the public sessions should be held in Ward 10 or as close to it as possible.

As Inspector, I was vested with the same powers as a Commissioner under the *Public Inquiries Act*[4], as set out in Section 571(3)(b) of the *Municipal Government Act*. In setting procedures applicable to the conduct of public hearings in this Inspection, I was guided by the procedures followed in public inquiries in Alberta, particularly relating to the subpoena power which I exercised to secure prehearing statements under oath. I also adopted the law governing public inquiries to guide the scope of the participation in the public hearings afforded to parties who either applied for or were unilaterally granted status as parties to the Inspection, specifically the City of Calgary, Margot Aftergood and David Aftergood.

My Inspection process generated an involvement of the courts which has not been experienced in previous Section 571 inspections. The Inspection was named as a party in legal proceedings and I have had to consider extensive legal advice, far beyond anything I anticipated. In my view, the procedural issues that the Clark Inspection anticipated and addressed, in extending an Inspection to include public hearings, are instructive for future Inspectors who may be appointed under Section 571. Therefore, at my request Inspection Counsel will be preparing a separate report to Alberta Municipal Affairs on procedural matters.

On March 17 an action commenced by way of Originating Notice in the matter of *Margot Aftergood and David Aftergood v. the Minister of Municipal Affairs and*

[4] R.S.A. 2000, c. P-39

Robert Clark. The court was asked to quash the Inspection, or to prohibit it from proceeding. The court also was asked to find bias and procedural irregularities in various aspects of the inspection process. A judicial review of the determination of the Minister of Municipal Affairs denying funding to the Aftergoods was also sought.

Following an application for interim injunction against the Clark Inspection brought March 18, the Honourable Mr. Justice Scott Brooker provided directions which allowed the first week of the public sessions to proceed and scheduled a hearing on substantive issues in the Originating Notice for April 13. Consequently the first week of public sessions was held as planned at the Coast Plaza Hotel and Conference Centre, 1316 33 Street N.E., March 21 to 24. The second week of the public sessions, at which time testimony from witnesses related to the campaign of Margot Aftergood for alderman in Ward 10 would be heard, was re-scheduled for April 18 to 22 at the Port O' Call Inn, 1935 McKnight Blvd. N.E.. The third public hearing session was tentatively scheduled for April 28 and 29.

Mr. Justice Brooker rendered his decision from the Bench in relation to the Aftergood application on April 18, the morning that the Aftergood campaign witness testimony was scheduled to begin. The Aftergoods' application was dismissed, and all remedies claimed against the Clark Inspection and the Minister denied. However, Mr. Justice Brooker went on to provide an interpretation of the scope of the issues that properly fell within the terms of reference which altered and limited the use I could make of investigations pursued to that date. He indicated that in examining the terms of reference, the nature of the list of issues I was asked to address in my report should give an indication of where my efforts should be concentrated. Six of the seven issues on which you asked me to comment, on page 2 of the terms of reference, concern election administration and policy, compared to a single reference to determine the "facts and circumstances connected with the irregularities".

In Mr. Justice Brooker's view, my focus was to be on the municipal election process, and not on the irregularities themselves. My assignment was not the "who done it", but instead predominantly on the "how was it recognized and addressed, and how can it be stopped from happening again". Specifically, if I found that the named electors did not complete Special Ballots on their own behalf, who may have done so in their name was a matter to be left exclusively with police authorities. Mr. Justice Brooker noted that these directions were rendered for the benefit of the Clark Inspection and would no doubt be considered in its further proceedings, and that my process merited judicial direction in part in that questioning of David Aftergood had exceeded these bounds by seeking forensic evidence intended to determine who completed the Special Ballots, if not the electors. Accordingly, the Aftergoods were awarded costs of the application.

The Aftergoods immediately announced their intention to appeal Mr. Justice Brooker's denial of their application and requested a stay of the decision. Mr. Justice Brooker granted a stay until 5:00 p.m. on April 20 to allow an application before the Court of Appeal, appealing his Order and seeking a further stay. I, therefore, convened the planned public session on April 18 and immediately recessed it until April 21.

On April 20 David Aftergood, Ron Aftergood, Son Xuan Nguyen, Anh Kim Pham and Thanh Kim Pham were served by the Calgary Police Service with Summons alleging the commission of offences under section 148(1)(a) and, in the case of the Aftergoods and Nguyen, section 148(2)(a) of the *Local Authorities Election Act*. On the same morning, the Honourable Mr. Justice Willis O'Leary, of the Alberta Court of Appeal, in relation to the Aftergoods' stay application, ordered that all aspects of the Inspection could continue except any public hearing evidence directly related to the Aftergood election campaign until the date of the appeal, which was set for May 20.

I therefore adjourned the planned Aftergood witness testimony and set May 30 to June 2 as the dates for a further public session.

With their cooperation, the witnesses tentatively scheduled for April 28 and 29 provided their evidence on April 21 and 22.

As a consequence of the serving of the Summons, it was clear that police authorities had "dealt with" the process by which Special Ballots may have been requested and supplied to the City of Calgary Returning Office, by the accuseds, in the name of Ward 10 electors. These matters were specifically excluded from the scope of the Clark Inspection's work under the terms of reference. These circumstances, together with the interpretation of my terms of reference offered by Mr. Justice Brooker, led me to conclude that I would not be able to hear evidence related to the source of the names used to apply for Special Ballots or who made the applications, completed and submitted the "Suite 307" Special Ballots.

In other words, the "who done it" has been left with police authorities and the Prosecutor's office, whose extensive commitment of resources and accumulation of evidence in relation to Ward 10 irregularities, shared with this Inspection, leave no doubt that the importance of this matter has not been lost on Alberta Justice and the Calgary Police Service. Consequently, I again revised the schedule of public sessions and set June 1 as the date to hear closing arguments, proposing to call no further testimony from the remaining witnesses, all of whom were in some sense associated with the Aftergood campaign.

On April 29 I was advised that the Aftergoods were discontinuing their appeal as far as it related to the Inspection, though I understand it continues as against the

Minister. I therefore confirmed the date for final submissions and I heard them on June 1 at the Port O' Call Inn.

All of the schedule changes caused significant administrative challenges in locating suitable space which could be made available on short notice in the busy Calgary market, which, together with the additional legal costs involved, increased the cost of the Inspection.

During the background research phase of the Inspection, I reviewed Statistics Canada demographic information on Ward 10 which shows that 28.5% of the resident population are immigrants, nearly 40% of whom have immigrated in the last 15 years. The two largest groups are from Vietnam (24%) and the Philippines (12.6%). All of those statistics exceed the City-wide numbers. Consequently I initiated contact with the Ethno Cultural Council of Calgary (ECCC) to generally discuss the experience of new Canadians in participating in the Canadian democratic process. ECCC members assisted me in arranging a Roundtable/Town Hall session on April 20. My purpose was to receive advice regarding barriers that new Canadians experience in participating in the democratic process in Canada and suggestions for recommendations that I might make to assist in addressing those barriers.

A complete list of witnesses, counsel involved at the public hearings, and people who assisted with the community consultation is attached to this report as Appendix B. Transcripts of the evidence at the public hearings and of the Roundtable/Town Hall were prepared and have been filed with Alberta Municipal Affairs together with the Exhibits tabled at the sessions. Several Exhibits are marked "SEALED" to protect personal information included in them. A list of Exhibits is attached as Appendix C. Exhibits 13 to 47 were not tabled during the public sessions and so are not officially marked as exhibits. Appendix D lists written submissions received by the Clark Inspection from various sources.

I am also forwarding to Alberta Municipal Affairs a number of reports by the Electoral Commission of Great Britain, and related papers, concerning the similar but more broadly implemented postal and proxy voting process there, which your officials may find useful.

As mentioned earlier, my original intention, providing that sufficient evidence was available, was that I would be able to advise you who was responsible for the irregularities. The serving of Summons by the Calgary Police Service and the impact of various court decisions prevent me from doing that. I regret this very much since, in my view, the actions of a few individuals have called into question the integrity of the local election process across the province.

While I am providing recommendations regarding the process, I believe that it is those individual actions, not the process, which is primarily responsible for this

Inspection being called. I look forward to the criminal justice system providing information for Calgarians which I am now prevented from including in this report.

During the Inspection I suggested that perhaps the City of Calgary should be liable for some or all of the costs. In reviewing the recommendations you will notice that the majority are applicable to municipal elections across the province. As a result, I am not recommending that Calgary be asked to bear any portion of the costs of the Inspection. In addition, it is my understanding that the costs of previous Section 571 inspections have been considered the financial responsibility of the province.

I had considered sending a letter to each person whose name appears on the "Suite 307" request list, encouraging them to participate in the democratic process in spite of this experience, and giving them some direct notice of the attention that has been paid to this important issue in my report. I have not done that but I am hopeful that this report, and its distribution by the Minister and coverage in the media, will serve the same purpose.

Finally, it had been my intention to include an additional Appendix which detailed the costs of the Inspection. I cannot do that at the present time because all of the costs have not been finalized. I anticipate that the actual Inspection costs will be close to the original budget. However, significant additional costs have been incurred as a result of the *Margot Aftergood and David Aftergood v. The Minister of Municipal Affairs and Robert Clark* action. When all of the costs are known, I will be submitting a summary to you and would encourage you to make that public then.

INSPECTION INFORMATION

In this section, I will review the information which I received during the background research and investigation phase of the Inspection and the information presented during the public hearing sessions.

CALGARY ELECTION REGULATION

Municipal election procedures in Alberta, including the City of Calgary, are conducted under the principle that administrators are, where possible, to interpret the governing statutes and regulations, and conduct elections, in a manner that enhances enfranchisement. This is reflected, fundamentally, in the fact that a person who presents at a voting station on election day, and is prepared to swear on a Form 8 under the *Local Authorities Election Act*, of their entitlement to a ballot, is provided with the same, so that restrictions which might prevent qualified electors from voting are avoided. This principle has been extended to the introduction of the Special Ballot process for municipal elections in the City of Calgary in 2004, and prompts the observation that municipal elections are largely run on the "honour system" in this respect.

The *Local Authorities Election Act* prescribes a standard system for local elections in Alberta and provides a mechanism enabling individual municipalities to adapt the system to their particular communities. That flexibility is provided in Section 160:

> *160 (1) Notwithstanding anything in this Act, the Lieutenant Governor in Council may make regulations*
> *(a) prescribing a system for the conduct and procedure of an election or vote that is not provided for in this Act or that is a modification of a system under this Act.*

Such regulations have also enabled Calgary to adapt the standard provisions to its own election system.

Special Ballots were first used in local authority elections in Alberta in 2004 but have been used in provincial elections since 1982. While it supported the concept, the City contended that the insertion of *Election Act*[5] (which governs provincial elections in Alberta) Special Ballot provisions almost *verbatim* into the *Local Authorities Election Act* was inappropriate and could have been improved in a number of instances.

In fact, the City expressed concern that there was no consultation with municipalities prior to the amendments being introduced in the Legislative

[5] R.S.A. 2000, c. E-1

Assembly and subsequently that the Government was not willing to consider amendments to the Bill after its introduction.

The City of Calgary had been expressing concern regarding declining voter turnout in municipal elections for many years. City records indicate the following:

Year	# Electors Enumerated	# Electors Who Cast Ballots	% Electors Who Voted
1977	271,693	134,646	49.6
1980	329,783	153,426	46.5
1983	407,692	156,717	38.4
1986	432,879	161,380	37.3
1989	453,969	220,453	48.6
1992	480,320	164,109	34.2
1995	513107	120,164	23.4
1998	551,107	252,608	45.8
2001	584,651	222,630	38.1

Consequently, the City welcomed the introduction of Special Ballots for local elections as one way of potentially enabling more electors to participate. With a view to making this an even more attractive option, the City requested a Section 160 regulation. The relevant provisions of the *Election Act*, *Local Authorities Election Act* and the Calgary Regulation are shown below.

ELECTION ACT	***LOCAL AUTHORITIES ELECTION ACT***	**CALGARY REGULATION**
116 (2) An application for a Special Ballot may be made (a) in writing, (b) by telephone, (c) by fax or electronic mail, or (d) in person, by an elector to the Returning Officer of the elector's electoral division at any time between the issue of the writ and the closing of polls on polling day.	**77.1 (2)** An application for a Special Ballot may be made (a) in writing, (b) by telephone, (c) by telecopier, or (d) in person, by an elector to the Returning Officer of the elector's local jurisdiction at any time between the notice of election day and the closing of voting stations on election day.	**6 (2)** An application for a Special Ballot may be made (a) in writing, (b) by telephone, (c) by telecopier, (d) electronically on-line through the City of Calgary website, or (e) in person, by an elector to the Returning Officer at any time between July 1 in the year of a general election and 4:30 p.m. on election day or, in a case other than a general election, between the date on which notice of nomination day is first given and 4:30 p.m. on election day.

For the purposes of this Inspection the most significant innovation in the Calgary Election Regulation was Section 6(2)(d) which introduced application for a Special Ballot "electronically on-line through the City of Calgary website". The Act does not envision an electronic application. The *Election Act* provides for applications "by fax or electronic mail" (Section 116(2)[c]).

A second innovation is that the Calgary Election Regulation, Section 6(2), allowed an elector to apply for a Special Ballot at any time from July 1 to 4:30 p.m. on election day. The *Local Authorities Election Act* provides that the application may be made "any time between the notice of election day and the closing of voting stations on election day". Under the *Election Act* (Section 116[2]) the application may be made "at any time between the issue of the writ and the closing of polls on polling day".

Under the *Local Authorities Election Act* nomination day is four weeks before election day. In 2004 nomination day was Monday, September 20. Nominees have 24 hours after nomination day to withdraw if they wish. Notice of election day is given following that period. This is so that all the election procedures will not be implemented if all the positions available for election are filled by acclamation.

The consequence of these different provisions is that electors have 27 days during which an application might be made under the *Local Authorities Election Act*, 28 days in the *Election Act* and 110 days under the Calgary Regulation.

Calgary started sending out Special Ballot packages on September 22, promptly after the list of nominated candidates became available, so some Calgary applicants had up to 26 days to get the package back to the office. In the standard *Local Authorities Election Act* system there are a maximum of 27 days to return the package, the same as under the *Election Act*. City Election Officials estimated that about 5,000 electors would use Special Ballots. In the end result in the 2004 city election, only 19.8% of the electors in Calgary voted at all, and only 887 electors (excluding the "Suite 307" ballots) voted by Special Ballot.

The provisions of the *Election Act, Local Authorities Election Act* and the Calgary Election Regulation regarding counting Special Ballots are shown in the table below.

ELECTION ACT	LOCAL AUTHORITIES ELECTION ACT	CALGARY REGULATION
118 (6) At the close of the polling place on polling day, the Returning Officer shall deliver the Special Ballot ballot box to any deputy Returning Officer and poll clerk in the electoral division and advise them of the names of the electors who have so voted, and the deputy Returning Officer and poll clerk shall proceed in accordance with section 113 as if the ballot box were from an advance poll.	**77.2 (6)** At the close of the voting station on election day, the Returning Officer must deliver the Special Ballot box to the deputy of the voting station of the electors who have voted under this section in the local jurisdiction and advise the deputy of the names of the electors who have so voted, and the deputy must proceed in accordance with section 85 as if the ballot box were from an advance poll.	**7 (6)** At the close of voting on election day the Returning Officer must deliver the Special Ballot box, the completed certificate envelopes and the unopened rejected certificate envelopes to the presiding deputy of the Special Ballot voting station.

One area where the City would have preferred to have the *Election Act* provision continued was in the counting of the Special Ballots. Section 77.2(6), *Local Authorities Election Act*, required the Returning Officer to deliver the Special Ballot box to the deputy of the voting station of the electors who voted by Special Ballot.

City Election officials believed it would be impractical to attempt to deliver ballot boxes to all the voting stations in the 14 wards after the close of the voting stations. The Calgary Regulation, therefore, provides for a "Special Ballot voting station" at which all of the Special Ballots would be counted. This voting station was located at the City Election Office and staffed by a specifically assigned Presiding Deputy Returning Officer. In provincial elections, the Special Ballot box is retained at the Returning Officer's office and counted there.

In total, the Special Ballot requests received by the Calgary Election Office in 2004 by ward were:

WARD	1	2	3	4	5	6	7	8	9	10	11	12	13	14
SPECIAL BALLOT REQUESTS	94	55	73	49	89	95	68	71	67	1292	75	52	56	43

Excluding Ward 10, on average 57 requests were received per ward.

By comparison, there were 42 votes by Special Ballot in the 2004 provincial election in Calgary Montrose which includes the portion of Ward 10 east of 52nd Street.

As a matter of interest, the Chief Electoral Officer for Alberta reports that there have been no incidents of systemic abuse of these ballots in provincial elections. Alberta Municipal Affairs reports that, in addition to Calgary, the following municipalities used Special Ballots in the 2004 local authority elections: Barrhead, Beaver County, Cardston County, Cold Lake, Devon, Drayton Valley, Fort Saskatchewan, Fox Creek, High Level, Innisfail, Jasper, Killam, Lamont County, Morinville, Mundare, Pincher Creek, Rainbow Lake, Redcliff, Rimbey, Swan Hills, Vegreville, Westlock and the Summer Villages of Crystal Springs and Ghost Lake. The only irregularity related to their use in the 2004 local authority elections was the Calgary Ward 10 situation.

DESCRIBING THE IRREGULARITY

If the "Suite 307" requests had been made by individual electors, one would expect to note on any list of requests, which included the information sought from electors on the Special Ballot website, the following observations:

1. Requests would be received either in person at the Returning Office, by telephone, by mail, by fax, or through the website, normally during day or early evening hours, and generally sporadically;
2. Each of the different three qualifications (physical incapacity, absence from the City, or the status of election worker, candidate or candidate's agent) for requesting a ballot would be cited in the requests. Requests would be relatively few as a proportion of the general electoral population, as only a very limited number of electors would both qualify and wish to vote by this means;
3. Names of electors would be of varying ethnicities, and would show no observable pattern when set out in sequence;
4. Names would be entered alternatively and randomly in capital letters or small letters according to the practice of the individual;
5. Requests would be submitted sometimes for separate school ballots, sometimes for public schools ballots, and sometimes for neither, each of the three request categories available.
6. The optional fields such as contact phone numbers or email addresses would be filled in on occasion, sometimes one, sometimes neither, sometimes both, without discernible pattern.
7. Numerous different computers would be used to make website applications, no more than a few requests from each one;
8. The volume of Special Ballot requests across the City in each of the various 14 Wards might be very roughly the same;
9. The stamped self-addressed envelopes mailed to the Calgary Returning Office would be post-marked at different times, and received one to three days later by regular mail, with some perhaps being dropped off, during or after hours;
10. Different signatures and different handwriting or printing would appear in the portion of the envelope that indicated the place and date that it was being signed and on the ballots themselves;
11. Various candidates' names would appear on the ballots, alternately written with surname first or last, there being no direction in the instructions that the name be written in any particular manner;
12. If a campaign team undertook a coordinated effort to assist qualified electors to obtain Special Ballots, there would likely be a sizeable organization of volunteer workers required to contact the electors, deliver and pick up the Special Ballot packages, and ensure that the completed ballots were returned to the Returning Office. It is unlikely that the campaign team would arrange any significant number of requests for residents outside the Ward.

In fact, in reviewing the list of applicants seeking a Special Ballot package to be sent on their behalf to Suite 307, none of these observations can be made. An examination of the records of the "Suite 307" ballot requests shows that:

1. All applications were requested through the website. There is no evidence that a request was ever submitted for a mail-in ballot to be referred to "Suite 307" by any of the other four available means.

   Requests were received in sequence, in one to three minute intervals, steadily from September 27th through to October 6th, with a dozen more trickling in until October 10th. No applications were made on October 4th or September 28th. This averages approximately 150 requests per day, over eight days.

   The table to the right is a random sampling of sequential requests made for Special Ballots on October 4, 2004, to be sent to "Suite 307, 204-1440 52 Street N.E." showing the time that the request was recorded as having been received.

   The relatively short time between requests being received indicates that the requestor may have been using the BACK ← arrow on Microsoft Internet Explorer to enter new names, rather than closing and re-entering the website to renew the application procedure.

10/3/04 1:45:39 PM
10/3/04 1:46:25 PM
10/3/04 1:47:38 PM
10/3/04 1:49:10 PM
10/3/04 1:49:27 PM
10/3/04 1:50:26 PM
10/3/04 1:51:41 PM
10/3/04 1:51:46 PM
10/3/04 1:52:53 PM
10/3/04 1:54:05 PM
10/3/04 1:55:23 PM
10/3/04 1:57:46 PM
10/3/04 1:58:00 PM
10/3/04 1:58:53 PM
10/3/04 1:59:13 PM

2. Except for two who claimed physical incapacity, all of the "Suite 307" applications claimed to be on behalf of a person "being a Returning Officer, deputy Returning Officer, constable, candidate or agent who may be located on election day at a voting station other than that for the elector's place of residence". There was no evidence provided to me that any of these applications were intended to indicate a person working for the Returning Officer. Therefore, I will be referring to the applications claiming that the person named is a "candidate or agent".

   It is, bluntly, impossible that so many persons, almost 1300 in one Ward, would qualify under the criteria set out in the Calgary regulation as working for a candidate at a voting station other than their own on election day and accordingly unable to vote.

3. The great majority of the surnames are one of 21 identified common Vietnamese surnames, followed by a series of a few dozen names of obviously generally East Indian origin at the conclusion of the list.

4. The names were submitted in a pattern of entry in alphabetical order by first name. Upper case letters were used for some alphabetical sub-lists, then lower case for other sequences, as if two distinct methods of text entry were being used. There were 20 separate and distinct entry sequences.

5. Except for eight cases where public school support was indicated, the applications did not indicate school support.

6. Except for 15 applications entered consecutively on September 29th, neither phone numbers nor email addresses were supplied.

7. Identification of IP addresses showed that only two computers were used for the entire list of Suite 307 requests.

   The IP addresses were traced to a specific address in Ward 10, registered for the period September through October, 2004, which was not a location open to public access.

   City of Calgary IT Security reported that the requests originated from two Internet Protocol addresses:

   - 68.146.193.22 made 143 requests
   - 68.145.26.80 made 1155 requests

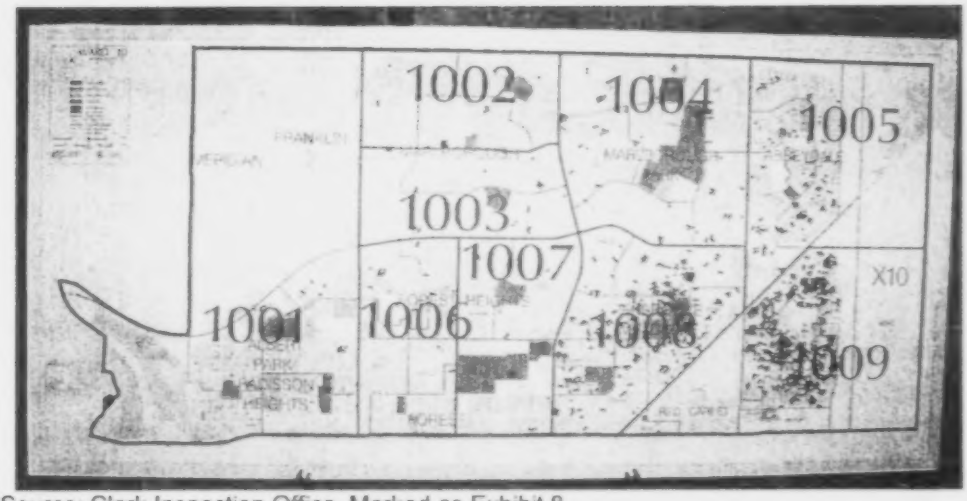
   for which the Internet Service Provider was Shaw Cable.

8. 1,266 applications were submitted in the name of Ward 10 residents, predominantly from the east side of the Ward, 29 from Ward 5, and 3 from elsewhere. The requests for "Suite 307" Special Ballots were more than the total requests in the rest of the City.

   Of the 32 requests for special mail-in ballot packages to be referred to "Suite 307", which originated from outside Ward 10, all but a couple of these residences fall within the boundaries of the Calgary Montrose provincial constituency. None of these applications were returned, suggesting that a source list of residents from that constituency may have been used in an organized mass data entry request process, and those Special Ballot packages referred to Suite 307 for residents outside Ward 10 were likely discarded upon receipt.

   As shown on the map on the following page, the vast majority of the "Suite 307" requests were related to addresses in Ward 10 located east of 52nd Street N.E.

9. All of the "Suite 307" Special Ballots were returned by being deposited in the mailbox slot of the Returning Office in essentially three large batches.



Source: Clark Inspection Office, Marked as Exhibit 8

10. Examples of the similarity in handwriting used in completing the certificate envelopes, particularly the words "Calgary" and "October", reveal that a limited number of people likely were involved in the completion of the special mail-in ballot packages, before their submission to the Returning Office.

    There are very obvious similarities in the manner in which the candidate names are written or printed on the ballots, and in the handwriting style.

11. The legible ballots from "Suite 307" were all cast for Dave Bronconnier for Mayor and Margot Aftergood for Alderman, written almost exclusively as "Aftergood, Margot".

12. The candidate for whom the Special Ballots were cast, and whose supporters may have initiated and pursued this coordinated Special Ballot request, completion, and submission process, Margot Aftergood, was not aware of any demand from electors to use such a voting alternative. She says that she knew of no coordination of special mail-in ballot requests from her campaign, the identity of – or even whether there were - any persons of Vietnamese-Canadian background working on the campaign.

    There was no evidence provided to me that this campaign had the organization and capacity to enlist the number of volunteers and workers that would be necessary to manage almost 1300 Special Ballot applications at the request of the electors involved.

Further, the Calgary Police Service attempted to contact 1100 of the persons named on the list of 1266 requests. Contact was actually made with 482 persons who were asked: "Did you request a mail-in ballot?" 478 indicated that they did not request Special Ballots. This corroborates the conclusions drawn from the informal survey done by election staff on October 13 in which 35 persons were contacted, and 32 said they didn't vote by Special Ballot.

When the Special Ballot certificate envelopes returned to the Elections Office were inspected, a number seemed to have similar handwriting. During their interviews with persons whose names were listed as having requested Special Ballot packages, the Calgary Police Service asked many of these people to sign the interview form. I have compared the handwriting on some of the elector's certificate envelopes with the signatures on their interview forms. This appeared to indicate different people signed these envelopes and forms, offering in my view documented proof that many of the electors did not complete their own ballots and certificate envelopes.

As noted earlier, the question of who completed these ballots, and organized and implemented the massive website applications to be sent to Suite 307, has been determined by the courts to be beyond the terms of reference of this Inspection and is the subject of investigations by the Calgary Police Service, and charges pending before Provincial Court. However, I do conclude the vast majority of the Special Ballots were requested, completed, and submitted in the names of electors without their knowledge or participation.

DETECTION OF IRREGULARITY

On September 27, 2004, PDRO of Special Ballots, Barbara Webb, noted the unusual nature and pattern of the requests when "Suite 307" Special Ballot requests were first received through the website and alerted her supervisor, the Returning Officer. Given the manner in which the computer programmers allowed Special Ballot request software operators, such as Ms. Webb, to view the data received via website, the detection of the irregularity of the ballots was easy and prompt.

It has been argued that the persons directing and executing this mass submission of Special Ballots, in the names of others, seemed to be doing so without taking simple steps to avoid detection. Some have suggested that this is an indication that there may have been some misunderstanding, that a mass Special Ballot request and submission process was perhaps one authorized by the governing legislation, and an appropriate activity for the campaign team. In my view, the wording of the sections of the Candidate's Handbook, Elector's Information pamphlets, and website page instructions, were sufficiently clear to indicate that only qualified electors could apply for a Special Ballot, and that such applications needed to be made personally, or at least following express instructions on their behalf. The clearly communicated instructions in the Special Ballot package that an individual elector must complete his or her own Special Ballots, enclose them in the certificate envelope and sign the envelope, suggests that this irregularity could arise from no mere "misunderstanding'.

City of Calgary witnesses indicated that they have no record of requests for any clarification about the nature and restrictions of the Special Ballot process received from any campaign team or the public during the municipal election. If

there was some initial confusion on the part of those involved in these irregularities, they were soon "willingly blind" to obvious process restrictions. Surreptitious delivery of the ballots in the dark of the night on three occasions would indicate a wish on the parties involved to remain unknown, no matter whether so many of the other observations noted above provided clues, sometimes easily avoidable, as to their identity and the details of the process by which the Special Ballots were requested, completed, and submitted.

The Calgary regulation intended that only a limited group of entitled electors would be able to request, complete, and submit a Special Ballot, on their own behalf. It is my view that the wording restricting the entitlement to a ballot to narrow circumstances and requiring the elector to participate in its request and completion, is made clear at each critical threshold in the process, specifically in the communication of the details of the Special Ballot program to electors and candidates, the website request inquiries, and at the time of ballot completion and submission.

I cite from the wording in evidence to which those requesting Special Ballots may have had reference in the process:

1. **Candidate's Handbook** (CANDIDATE INFORMATION, General Election October 18, 2004)

   SECTION 4 ELECTION PROCEDURES

   MAIL-IN (SPECIAL) BALLOT

   ...Electors who are unable to vote at an Advance vote or at their voting station on Election Day, because of:

   - Physical Incapacity...
   - Absence from the City... or
   - Deputy Returning Officer (DROs), Candidates or Candidate Agents

   Persons working, either for the Election Office or for a Candidate on Election Day, who are at a voting station other than the one specified for their place of residence;

   are eligible and may apply to vote by mail-in (special) ballot.

   ...

   If requestors mailing address changes, following submission of the request, they [may] contact the Election Office at ..., providing the confirmation number and new address.

2. **Election Circular** (City of Calgary General Election – Questions and Answers for Electors, Monday, October 18, 2004 Vote)

   Voting Information

   You may request a Mail-In (Special) Ballot if:

   you are unable to vote during the whole of the Advance Vote or at your regular voting station on Election Day;

   a. because of physical incapacity,

   OR;

   b. you are absent from the City,

   OR;

   c. you are working Election Day as a Deputy Returning Officer, Constable, Candidate or Agent....

3. **Special Ballot Request Website**

   Electors who are unable to vote during the whole of the Advance vote or at their regular voting station on Election Day because of:

   (a) Physical Incapacity...
   (b) Absence from the City...
   (c) Deputy Returning Officers (DROs), Candidate or Candidate Agents...
   Persons working on Election Day, either for the Election Office or for a Candidate, at the voting station other than the one for their place of residence;

   are eligible and may apply to vote by mail-in (special) ballot....

   Reference is made to *FOIPP* legislation protecting personal information secured, and an endorsement regarding ballot package pick up requires that the requestor consider whether "my mail-in (Special Ballot package)" is to be held at the Election Office and "I will arrange to pick [it] up...".

4. **Voting Register (Certificate Envelope)**

   STATEMENT OF ELECTOR ELIGIBILITY: Part 1

   I am the elector named above and the address and school elector is correct. I am eligible to vote at the above election because:

   - I have not voted before in this election;
   - I am 18 years of age or older;
   - I am a Canadian citizen; and
   - I have resided in Alberta since 2004 April 18

   I certify that I am qualified to vote under sections 77.1-77.3 of the *Local Authorities Election Act* because I am unable to attend in person on election day or at the advance voting station by reason of....

   I declare that the statements are true.

   _____
   SIGNATURE OF ELECTOR

5. **Ballot ("For Alderman" and "For Mayor")**

   Print the name of the candidate of your choice on the line below:

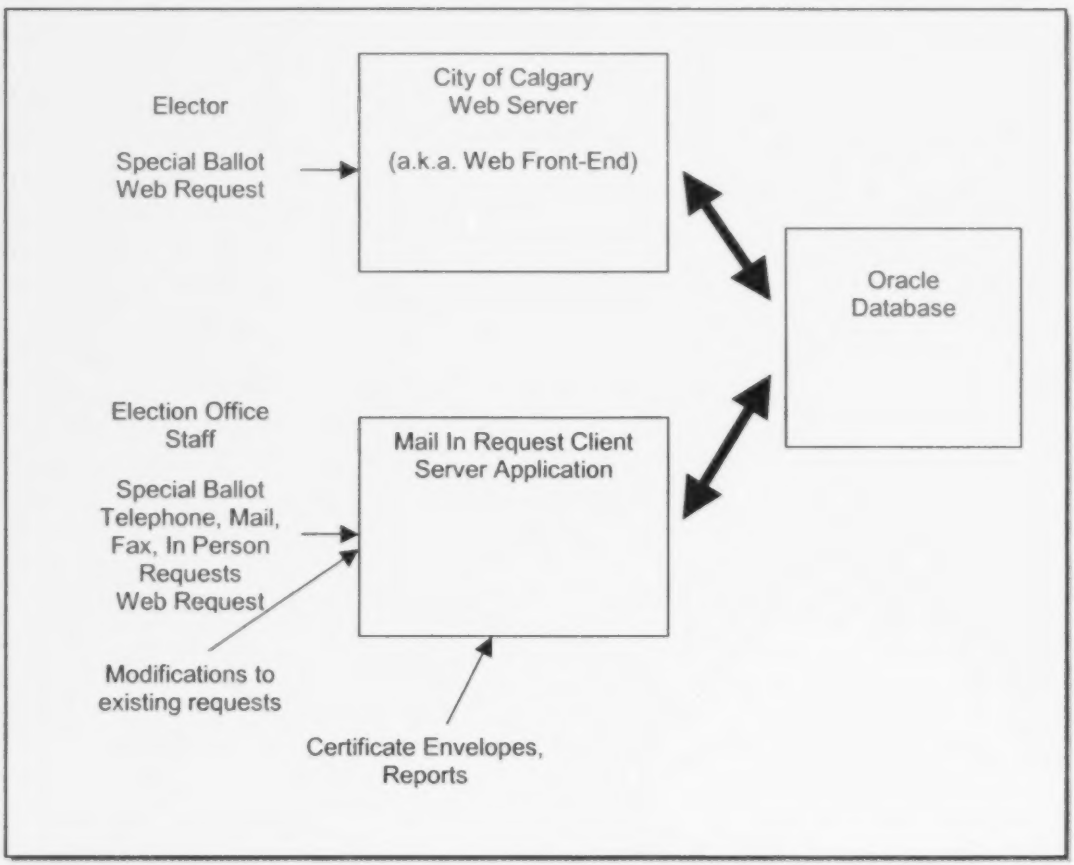
   I vote for:

   _____

While the phrasing used to outline the qualification of electors for a Special Ballot may not in each case have exactly mirrored the Calgary Regulation, those who completed this process in the names of Ward 10 electors could be subject to no reasonable confusion that this was in fact a process reserved for the electors themselves, who were required to affirm their own entitlement to a Special Ballot package and to complete it personally

WEBSITE

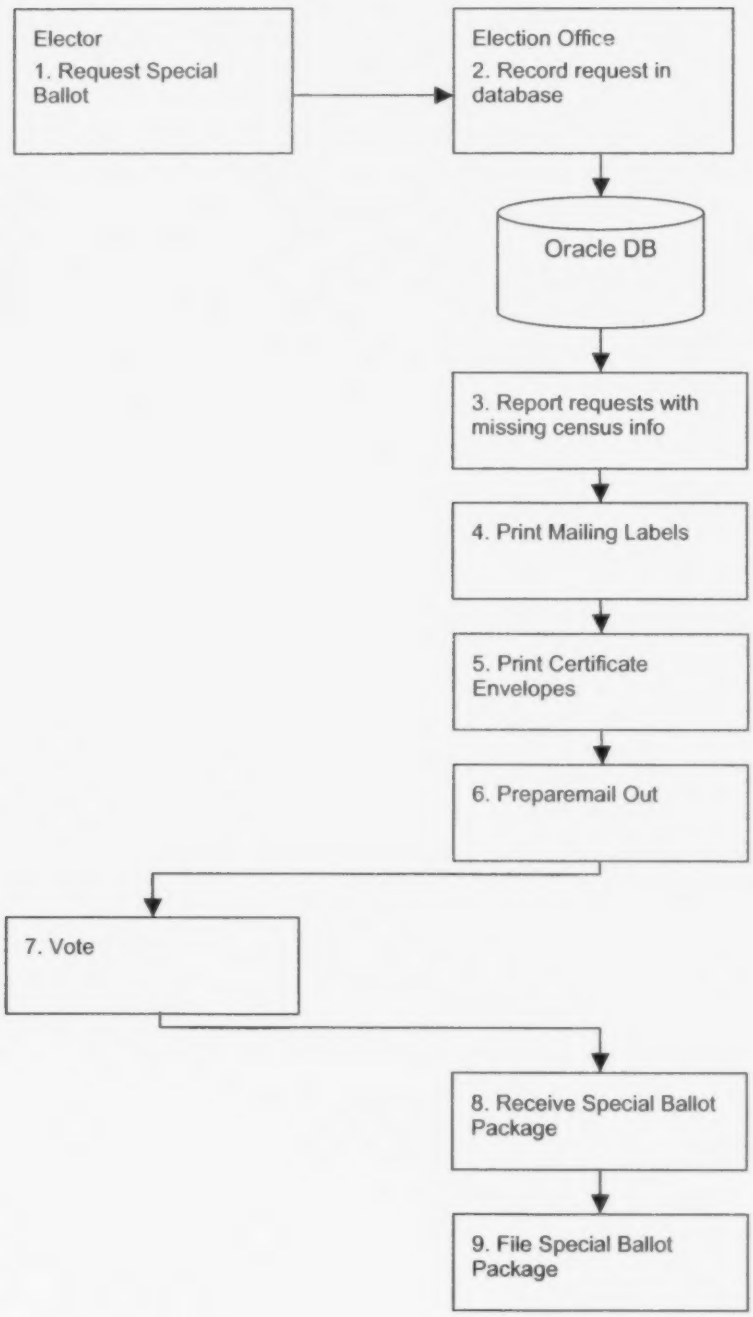
Randy Edwards, Professional Systems Ltd., reviewed the development and operation of the Special Ballot request website and concluded that the system worked, and provided the service for which it was intended. It was designed with human interface control points which ensured that the Elections Office maintained control over the process. The basic system is depicted on the following page.


Elector
Special Ballot Web Request
City of Calgary Web Server
(a.k.a. Web Front-End)
Oracle Database
Election Office Staff
Special Ballot Telephone, Mail, Fax, In Person Requests Web Request
Mail In Request Client Server Application
Modifications to existing requests
Certificate Envelopes, Reports

(Source: Professional Systems Ltd. Report, March 18, 2005)

All requests, regardless of how they were received, were recorded in a database and were subject to basic checks before the Special Baliots were sent off. All addresses were verified against the City Census and the City's address verification system known as POSSE. Those that could not be validated in that manner were validated, where possible, manually. When the ballots were received back from the electors they were verified and recorded as received in the database. The process, as described by Mr. Edwards, is outlined on the following page.

Special Ballots Process Work Flow



Source: Professional Systems Ltd. Report, March 18,2005

The system required human interface at several key steps. Elections staff were responsible for responding to the requests, printing mailing labels, and certificate envelopes and preparing the mail outs.

The system also produced several management reports to assist the staff in monitoring the process. Each request received an eight-character request identifier and the following information was recorded:

- Method received (in writing, by telephone, by fax, web, in person)
- Mail In Reason (physical incapacity, absence, election worker or agent)
- Rejection reason (invalid address, forms incomplete, name does not match, late, duplicate, not deliverable)
- Name, school support and address information
- Ward and voting station
- Request Received Date
- Certificate Mailed Date (date package was sent to the elector)
- Certificate Received Date (date the elector returned the package)
- Mailing Address Information (where the package was to be sent)
- Contact Phone Number and email address
- Pickup Request (to note that elector wished to pick up the package)

Database printouts disclosing this information on a single spreadsheet for all "Suite 307" requests were made available to the Inspection and were ultimately very useful to our analysis.

As reported by Mr. Edwards, there are three distinct components or parts to the Special Ballot application: the Web front-end; the mail-In Request Client Server Application; and the Oracle Database Server where all of the requests were stored. He reported as follows:

"**1. Web Front-End**

Electors can initiate a request for a Special Ballot by going to the City of Calgary website at http://www.calgary.ca and navigating to the Election Mail-In (Special) Ballots web page. This is where they access the so-called Web Front-End.

The Web Front-End is composed of a series of four web pages upon which the elector specifies the information required for receiving a Special Ballot.

On the first page, the elector provides their name, their city and the reason for the request. On the second page the elector provides their school support information, contact information, residential address information and mailing address information and ballot package pickup information. The third page allows the elector to verify their information before submitting the request. The last page

is a confirmation page which thanks the elector for their request and confirms that the request has been made.

The Web Front-End verifies the address information against the census database and against the POSSE system for correctness. When the web request is complete, it hands off the information to a special DCOM / UML component which posts the request to the Oracle Database.

The Web Front-End is an IIS-based, ASP web application. It is integrated within the City of Calgary's web presence.

2. **Oracle Database**

Oracle is the database standard in the City of Calgary. A database was established to hold all Special Ballot requests including those received via the web and also those received via other methods such as: telephone, fax, mail-in or in-person requests.

The Web Front-End and the mail-In Request Client Server Application both access this database.

3. **Mail-In Request Client Server Application**

The mail-In Request Client Server Application is a Visual Basic application responsible for processing the mail-in requests. This is the part of the system where the majority of the work gets done.

It is used to record Special Ballot requests received via phone, fax and mail-in. It allows the elections office to make corrections to the request information. It is used to print mailing labels and certificate envelopes. It is used to track when Mail-In Requests are received, when the packages are sent to the elector, and when the requests are received back.

It has features to print reports such as "Missing Census Information", "Rejected Mail-In Requests" and "Mail-In Requests Held for Pickup"."

Using the system, Elections office staff were responsible for responding to the requests, printing mailing labels, certificate envelopes and preparing the mail outs. This led to the discovery of the exploitation attempt on the day the first batch of suspicious requests was received. Mr. Edwards concluded that, while they might have been improved, the controls that were in place were appropriate and "in-line with the standards and procedures in use by other jurisdictions today".

Mr. Edwards advised that the application architecture chosen for this application was sound. "The design employed to make the Special Ballot requests available to the general public was not a new approach. The architecture of receiving the requests via the Web Front-End and passing them to an Oracle database was standard and consistent with other systems in use by the City of Calgary."

He also concluded that the web server security was sound. "The City of Calgary employs industry-standard internet site and web server security. The web front-end application ran on a server or group of servers referred to as the C-Web. A hardware firewall is in-place to lessen and prevent unauthorized access to these servers. A server software firewall is in-place to provide server-level security. HP has been contracted to monitor the site and to monitor for any security breaches and determine whether the network is saturated or under stress. There was no breach of the web server security."

In my view, the basic problem was not the system but its intentional exploitation or misuse. The computer programmers and election administrators apparently gave little if any thought during the design phase to the potential necessity of addressing mass applications such as occurred in this case. It was contemplated that their Special Ballot request website would be used by those entitled, and particularly appeal to young people, assisting voting by students ordinarily resident in Calgary but absent at educational institutions located elsewhere. However the critical inclusion of human interface at key points in the Special Ballots "process work flow", as Mr. Edwards terms it, allowed for the eventually successful apprehension of an unanticipated problem.

USE OF LISTS

Analysis of the list of 1266 applications to be sent to "Suite 307" identified a series of sub-lists, each appearing to be sorted by first name, rather than last name. In addition there appeared to be a pattern of some sub-lists using capital letters and others using small letters. So I sought evidence from people experienced in gathering, manipulating and using voter lists for political purposes.

James Maxim testified before the Inspection. He has been a candidate on three occasions, most recently in 2004 in the federal riding of Calgary East which includes the area of Ward 10. He explained the development and use of lists during political campaigns. Campaigns attempt to create a profile of individual voters as well as a riding profile. During the sale of memberships for nomination purposes, a variety of information is often routinely collected and entered into a database identifying the persons purchasing memberships for subsequent use during the election campaign. Also, sometimes other political persons in the area will share lists of supporters. Eventually this list can be supplemented by the list of electors provided by Elections Canada to candidates. The list of supporters

and the Elections Canada list can be compared to identify supporters actually qualified as electors.

Mr. Maxim provided examples from his own lists of the manner in which lists could be coded by ethnic community, age or other characteristics which could assist the candidate in personal contacts with voters. Lists can also be sorted and organized by either the basic information or by codes – alphabetically by first or last name, by poll, by ethnic community or by any combination of factors.

Mr. Maxim concluded that the candidate is "ultimately responsible in the final analysis for all of the activities that go on in your campaign. It's your name that is on the line."

INVESTIGATING THE IRREGULARITY

The Calgary Police Service Commercial Crimes Unit devoted 24 personnel to this investigation, which remains ongoing, many of them full time. Their Preliminary Report to Prosecutor, which was provided to me, contained a number of documents which were tabled as exhibits in the public sessions of the Inspection, particularly the elector interview questionnaires, organized copies of the ballot certificates and envelopes, and copies of the ballots themselves.

Calgary Police began their investigations as soon as they were notified with the expectation that, if warranted by the evidence, charges would be laid, under the *Local Authorities Election Act* and perhaps ultimately under the *Criminal Code*. From the outset, the Calgary Police Service has correctly recognized the complexity and importance of the issues involved which require a very thorough police investigation. Alberta Justice did not wish this commitment of resources to be compromised or made less likely to result in convictions by legal issues arising from concurrent testimony about the matters under investigation in the public hearings conducted by the Inspection or other investigation related activities. That was the rationale, as I understand it, for the restriction in my terms of reference guiding me away from "matters dealt with by police authorities". Clearly the government's priorities in establishing the structure within which I operated, and the commitment of relative resources between the police investigation and this Inspection, was designed with that in mind, with the view that the processes could be concurrent and complimentary, but not overlapping.

The terms of reference direct me to refer anything uncovered in the investigations relating to *Local Authorities Election Act* or *Criminal Code* offences to police authorities. It would appear that the government's intent in establishing the structure within which I operated, and the commitment of relative resources, was designed to allow the Inspection to contribute to police investigations should it come across evidence relevant to their work which was pursued with a different

focus, with that in mind. On June 9, some evidence was referred to the Calgary Police Service, pursuant to this obligation.

From February 24 to April 15 I gathered statements from a number of witnesses in some way associated with the Margot Aftergood Ward 10 aldermanic campaign. Because of the reinterpretation of my terms of reference, I can make little use of these statements in this report. The information which I obtained during pre-hearing examinations was from six witnesses who were examined under oath and questioning concluded, one witness whose examination was convened over four separate days but not concluded, and one witness whose examination was completed but by agreement not under oath. Because all of these witnesses were associated with the Aftergood campaign, none of this information was tabled during the public sessions. An additional witness proposed to testify only in public. As a result of the narrowing of my terms of reference, none of these witnesses were called to testify at the public hearings. Some of these witnesses identified documents in their possession relevant to the terms of reference, marked as exhibits in their examinations, though not all of the documents undertaken to be provided were produced.

AFTERGOOD SETTLEMENT

During the preparations for the *Danielson v The City of Calgary, Barbara Clifford and Margot Aftergood* trial, the City Law Department became concerned that media positioning between the two former candidates was driving the conduct of the litigation and that the relationships between counsel representing the parties were "trying". The Law Department concluded that some of the grounds set out in the Notice of Motion in the action were minor and immaterial, and some, as a matter of law, did not constitute an impropriety. Two of the grounds were of substantial concern to the City's litigation counsel as potentially exposing the City to a finding of liability for costs in the action, no matter its ultimate conclusion, namely, the exercise of discretion by the Returning Officer in rejecting 157 ballots, and the malfunction of the website (referred to as Production Incident #2). As pre-trial discussions continued, the Law Department reached the conclusion that this would likely be a much longer trial than the one week originally scheduled since Danielson had provided a list of about 85 potential witnesses, about 50 or 60 of whom would likely be called – in addition to any witnesses called by Aftergood.

The Law Department was aware of a number of Alberta Court of Queen's Bench decisions in which the municipality had been held liable for costs on a solicitor/client basis, even where there was no question of the election being set aside. The expected protracted length of the trial therefore began to concern the Law Department as to the potential costs the City might be facing, which were estimated to be in the order of $170,000 at that time and significantly higher if the case proceeded to court. As a result of discussions on Saturday, November 27, Brand Inlow, the solicitor in the Law Department handling the case, concluded that there was an opportunity for a settlement. He initially consulted with City

Solicitor, Paul Tolley on Sunday, November 28 and met again on the morning of the 29. The City Manager was also consulted.

By Bylaw 48M2000, Calgary City Council delegated to the City Solicitor to settle legal proceedings involving the City not exceeding $250,000. It was decided by Mr. Inlow, after speaking to Mr. Tolley, that a settlement offer should be made "symmetrically" to the counsel for Danielson and Aftergood in the matter, calculated to be within the limits of the City Solicitor's authority, in order to avoid further costs. The offers were extended. By the time the Court convened at 10:00 a.m. on Monday, November 29, neither side had accepted. However, when Mr. Justice Martin entered the courtroom, Aftergood's counsel announced that Mrs. Aftergood had resigned. As part of that agreement the City would indemnify her for 60% of her legal costs.

Mrs. Danielson did not accept the offer and declined to withdraw the allegations that had been made. Eventually, with agreement by Mrs. Aftergood that she was not duly elected and had no right to hold the office, the court issued an order that the matter was at an end.

While this settlement was technically within the authority of the City Solicitor and had the support of the City Manager, some members of City Council felt their prerogatives had not been respected and expressed their displeasure. Reasons given by Mr. Inlow for not consulting Council included reports that an unknown number of members of Council had made contributions to the Danielson defense fund and that Mrs. Danielson had indicated her intention to make efforts to return that money to the contributors. It was not known whether the number of Aldermen who would have to abstain because of this pecuniary interest would result in a loss of quorum for the Council. Secondly, City Council was in a special meeting away from Council Chambers holding a strategic planning session and there would not have been time to get its approval. The City Manager says that he did inform the Mayor by cell phone on the way to the Council session that an offer was being made.

In response to my suggestion that there must have been some way of getting a matter on the agenda of City Council when they are already meeting someplace in the City of Calgary, Mr. Inlow responded that "rules about special meetings aren't quite that clear". Mr. Tolley said "We didn't believe it was appropriate to advance the matter to Council, number one, for timing; and the other reason that there was a person who would benefit from the settlement perhaps sitting on Council". Mr. Tobert said "The opportunity was so short that to actually bring Council together, officially as Council, and brief them on this matter, then you're basically making a decision not to settle the litigation". While the three people primarily involved clearly understood there was a political dimension to the issue, they felt they were justified in making the decision on factors relating to the litigation and good business practice basis. In other words, it was a sound legal decision but the "optics" were less than attractive.

COMMUNITY CONSULTATIONS

Arising from the 2001 Canada Census, Statistics Canada reported that 33.5% of the Ward 10 population was composed of "visible minorities" (either aboriginal or immigrant) compared to 18.7% for the City as a whole. 28.5% of the population were immigrants, nearly 40% of whom had immigrated in the last 15 years. The two largest groups were from Vietnam (24% [6.1% city-wide]) and the Philippines (12.6% [6.4% city-wide]).

At my request, the Ethno Cultural Council of Calgary (ECCC) arranged a Roundtable/Town Hall session to generally discuss the experience of new Canadians in participating in the Canadian democratic process. About 40 people from a variety of ethno-cultural groups (plus media representatives) attended the event, which was held on April 20 at Cappy Smart School in Ward 10. The session provided advice regarding barriers that new Canadians experience in participating in the democratic process in Canada and suggestions for recommendations to assist in addressing those barriers. A transcript of the presentations during the Roundtable and of the "buzz group" reports during the Town Hall has been filed with the Ministry of Municipal Affairs.

The obstacles to participation might be summarized as language, confusion and fear:

(a) **Language** is an issue for immigrants from countries which do not either teach English in the schools or use it in normal business. In addition to being uprooted from the place of their birth, new immigrants face the significant challenge of not being able to communicate with the English speaking majority in the City. That's one of the reasons that there is such a concentration of Vietnamese people in Ward 10. Persons whose native language uses symbols other than the Roman alphabet may even have difficulty identifying the candidates on a ballot.

(b) **Confusion** arises both from the language obstacle and from the federal (as opposed to republican) government system in Canada. Having three orders of government with three different election days and sets of election procedures (including where you go to vote) is confusing for a person coming from a country with a different system. Although, for the 2004 federal election, Elections Canada distributed nearly 200,000 copies of a voter information guide in 26 languages, broadcast radio ads in 23 languages and used print ads in 24 languages, Town Hall participants cited a lack of information about how to vote as being an obstacle to participation. Confusion also arises because political party rules do not require citizenship to participate in the nomination process but Canadian citizenship is an eligibility requirement to vote in all elections. It was even suggested that

political party names are confusing since the names do not mean the same thing as the definitions of the terms which are taught in ESL classes.

(c) **Fear** about speaking up or speaking out or of jeopardizing one's personal security by participating, was also mentioned.

Some of the suggestions offered at the Town Hall session to address these issues included:

- Fund ethno-cultural organizations to provide regular voter education classes for newcomers and to distribute information through communities (email, phone lists, community media), hold all candidate forums and elections and regular town halls with elected officials between elections
- Translate materials so that people can actually understand them and use them for programs on both public and community television, radio (i.e. multi-media education materials)
- Review eligibility of voters – people who have been here for years but are not Canadian citizens
- Introduce mandatory voting and either incentives to vote (such as a tax incentive) or penalties for not voting (such as loss of a driver's license)
- Arrange voting by the Internet
- Use symbols on ballots to assist low literacy electors to identify candidates
- Declare election day as a statutory holiday so that everyone can go to vote
- Hold each election at a well-known place so that people know where to go every time
- Teach children how to participate in the democratic process in the schools
- Create safe venue for critical voices and provide free legal assistance to harassed voters

The suggestions that election day be made a statutory holiday and to provide for Internet voting arise from the fact that, in order to establish themselves in Calgary, many people in the immigrant community work at two or more jobs. Section 58, *Local Authorities Election Act*, provides that every elector shall have three consecutive hours to vote while the voting stations are open and then continues:

(2) If the hours of the employee's employment do not allow for 3 consecutive hours, the employee's employer shall allow the employee any additional time for voting that is necessary to provide the employee the 3 consecutive hours, but the additional time for voting is to be granted at the convenience of the employer.

The Act also provides (Section 46) that voting stations will be open from 10:00 a.m. to 8:00 p.m. unless the elected authority decides to open them earlier. Calgary uses the standard hours. So if an employee starts work after 1:00 p.m.

or finishes work before 5:00 p.m., the employer need not worry about providing time off to vote. Consequently, a person working two jobs, one of which ends before 5:00 p.m. and one of which starts after 1:00 p.m., will not get 3 consecutive hours to vote and, in fact, may not have any non-working hours while the voting stations are open. This situation is what led to the suggestion that election day should be a statutory holiday. The same purpose might be fulfilled if elections were held on Sundays.

As a simple example of the various provisions giving rise to confusion, in Calgary

- for **municipal** elections, voting stations are open from 10:00 a.m. to 8:00 p.m. (10 hours)
- for **provincial** elections, polling stations and polling places are open from 9:00 a.m. to 8:00 p.m. (11 hours)
- for **federal** elections, polling stations are open from 7:30 a.m. to 7:30 p.m. (12 hours)

My recommendations will address a number of the concerns raised by the community.

BIRMINGHAM, ENGLAND EXPERIENCE

Before proceeding with my findings and recommendations, it is useful to review an experience in Birmingham, England, which had many striking similarities to the Calgary Ward 10 irregularity.

Electors in Great Britain are able to vote in local, national, and EU elections by way of personal vote at the polls on election day or at advance polls, by postal vote, by proxy vote, or by personal vote at a non-assigned polling station. Postal voting is allowed on demand – there are no conditions such as physical incapacity, absence or involvement in the election process which apply in Alberta for Special Ballots.

Any elector in England can apply to be on the "absent voter's list" at any point up to eight days before an election. Once endorsed on the absent voter's list, registration for a postal vote prohibits the named elector from receiving a ballot at a polling station. Without going into a lot of detail, there is a window of 19 days between the close of nominations and the vote in England. Election staff have four days to prepare the postal ballot packages, which include ballots with candidate's names printed on them. An intensive mail-out is to be completed within six days, leaving nine days for the postal ballot to be returned.

In Birmingham the number of postal ballots issued rose from 7,000 in 2001 to 70,000 in 2005. In some wards the number increased more than 250 times and overall voter turnout increased by over 300%. In one case the turnout was nearly 50%, three times the national average. The last minute return of an avalanche of ballots created havoc for election officials.

Richard Mawrey, Q.C., was appointed Commissioner to inquire into the irregularities. He found that well over 2,000 fraudulent ballots were executed and counted in one ward, necessarily requiring the election there to be set aside. Commissioner Mawrey noted in that election that there were six times as many postal votes as personal votes at the polls for the top candidates, and that many of these ballots were identically altered in a fashion that suggested that only one person could have done it. He concluded that other explanations for the almost identical appearance of these ballots were wildly improbable or incredible. Identical handwriting was noted on declarations of identity, and the overwhelming number of ballots with irregularities were cast for the candidates of one party. He said that over 200 witnesses were prepared to testify that they did not apply for Special Ballots, though their names were endorsed on the absent voter's list. He also noted that approximately 150 people on the absent voter's list had been interviewed by police corroborating his conclusions. Since most of the names used were of Asian origin, the interviews were somewhat hampered by poor English and confusion about being interviewed.

Commissioner Mawrey noted that Returning Officers in England are not presently empowered, and suggested they should not be empowered, to reject ballots on the basis of mere allegations of offences under the electoral law, or to reject ballots which appear valid on their face. Returning Officers are to apply the electoral regulations, not make them or police them. Further, in theory and practice Returning Officers should not be assigned to investigate election offences alleged against their political masters.

He made a variety of detailed recommendations regarding election administration aimed at ensuring proper controls at what he called the delivery stage, the execution stage, and at the submission stage of postal ballots. He also concluded that permitting a postal vote to be sent to an address other than the elector's own address is an open invitation to fraud.

In the case of the Calgary Ward 10 election, unusual things happened at all of the delivery, execution stage, and submission stages of the Special Ballots. In my view, if the ballots had been properly requested, the remainder of the irregularities would not have occurred.

FINDINGS

FINDING NO. 1 – TERMS OF REFERENCE FINDINGS

As I have previously noted, I have been directed by judicial interpretation of the terms of reference to focus on the Calgary municipal election administration system and to leave to others the determination of who committed any identified irregularity, and by what means.

Elections are administered by human beings. Since it is human to make mistakes, which is why there are erasers on the ends of lead pencils, there are bound to be errors in the administration of any election. The overwhelming majority of these errors are so inconsequential that they have no bearing on the outcome of the election.

In the case of the October 2004 Calgary Ward 10 election, the "Suite 307" ballots were of such a number that had they been cast for a candidate other than the winner and been counted, they would have changed the result of the election. So this irregularity was of a different magnitude than would normally be anticipated. It is worth noting that the irregularity could have had much larger consequences if one of the mayoralty campaign teams had been the perpetrator, potentially invalidating the whole 2004 City of Calgary election.

With respect to the general provisions of my terms of reference, I find as follows:

1. **the identification and clarification of irregularities which occurred or which were perceived to have occurred in the election process;**

The significant irregularity occurred in the 2004 Calgary Ward 10 aldermanic election. A large number of applications for Special Ballot packages were made, using the website, without the knowledge of the electors whose names were used in the applications, most of which were submitted to the Returning Office with the expectation that they could be counted as ballots cast in the name of the electors to whom they were issued. Had this not occurred, the website application process would likely have been judged a successful innovation.

2. **the factors contributing to, and circumstances connected with, irregularities or perceived irregularities in the election process;**

Municipal elections in Alberta generally have been characterized by honourable activity by candidates, campaign workers and electors. I believe that in the Ward 10 election persons embarked on a deliberate strategy to cast ballots in the names of others, and steal the campaign. In my view the primary reason that more stringent controls to prevent such activity were not built into the system was

that there was no expectation that they were necessary or that anyone would make such an attempt.

3. **the adequacy of the existing provincial and City of Calgary legislation, regulations, by-laws, rules and standards governing the conduct of elections, insofar as they relate to the election process;**

While a number of relatively minor amendments will be suggested, this irregularity is not primarily a legislative issue. With the benefit of hindsight, it is easy to say that a variety of preventive measures could have been taken in anticipation to prevent mass applications in the name of electors by a limited group of people. Such steps would not likely be under consideration if the Ward 10 irregularity had not occurred. Indeed, the standard legislative provisions appear to have worked well in all the other Alberta local authorities which used the Special Ballot provisions in 2004.

4. **the performance of all municipal officials and staff involved in the conduct of the election process;**

Election officials carried out their duties responsibly. In particular Returning Officer Barbara Clifford, with the assistance of her staff, identified the irregularity at the earliest opportunity, took the steps available to them and necessary of election administrators to investigate the validity of the ballots, and correctly rejected the 157 Special Ballots received which were perhaps regular on their face but subject to the numerous observations of irregularity noted above.

5. **the performance of the IT system and programs used in the conduct of the election process;**

While there are improvements that might be considered for the website application, the system and programs performed as they were expected to perform, allowing election officials to detect and react to the irregularity.

6. **the steps that can reasonably be taken to reduce or eliminate the risk of recurrence of any irregularities in the election process; and**

See the RECOMMENDATIONS section of this report below.

7. **any matters incidental or relating to any of the matters referred to in items 1 to 6**

These are addressed throughout my FINDINGS and RECOMMENDATIONS

In addition I was asked to address the following specific issues:

1. **the factors contributing to, and circumstances connected with, the irregularities which occurred in the City of Calgary's October 18, 2004 election process.**

A person or persons used the City of Calgary website to apply for Special Ballots for 1298 persons to be sent to the same mailing address. The named applicants, in the vast majority of cases, had no knowledge of the application being made or of the Special Ballot being completed and returned. While there are improvements that might be considered for the website application, the major factor contributing to the irregularity was the use of the website application process to receive, complete, and submit Special Ballots in the names of unknowing electors.

2. **the appropriateness of the provisions of the Local Authorities Election Act and the Calgary Election Regulation (Alberta Regulation 31/2004), particularly in regards to the following:**
   (a) **the Special Ballot provisions for local authority elections;**

An irregularity in one election in one ward in one local authority should not deprive the electors in all of the local authorities across the province of the opportunity to use a Special Ballot. I believe that the Act and Regulation provisions for Special Ballots are generally appropriate. I will be making some suggestions for improvements in my recommendations.

   (b) **the voter identification requirements for local authority elections;**

The Local Authorities Election Act is silent on the provision of identification. In my view a Returning Officer should be entitled to request identification from any elector about whom a question is raised during enumeration, at a voting station or when applying for a Special Ballot, in the interest of confirming the elector's qualification to cast a ballot. Many Returning Officers, however, have been reluctant to use their discretion to make such a request since there is no statutory authority to require identification.

   (c) **the Returning Officer's authority to decide on and deal with alleged contraventions of the Local Authorities Election Act and the Calgary Election Regulation; and**

The general scheme of the Local Authorities Election Act is that a candidate or an elector has the right to bring an alleged contravention before a judge for decision. I could not provide any realistic finding or recommendation on whether Returning Officers should be able to "decide on and deal with alleged contraventions" without consulting at least the Alberta Municipal Clerks Association and there should likely be a broader consultation. I would observe that the Returning Officer would then have the authority that is currently reserved to a judge. The Calgary Returning Officer has suggested that the Section 86

should specify the authority of Returning Officers to reject a ballot which it would be an offence to count under section 149(a).

(d) **the provisions that deal with the campaign process, including its fairness and transparency.**

The provisions of the *Local Authorities Election Act* which deal with what might generally be described as "the campaign process" are
Section 116 – Bribery
Section 117 – Undue influence
Section 118 – Allowable election expenses
Section 148(5) – Prohibited advertising
Section 150 – Activities at a Voting Station
Section 152 – Advertisement distribution

The Summonses served related to the abnormal campaign process involved in this Inspection were for offences under the Sections 148(1)(a) and 148(2)(a) of the *Local Authorities Election Act* which are related to improper voting.

Alberta Municipal Affairs has confirmed that the offence provisions of the Act were not reviewed in conjunction with the introduction of the Special Ballot provisions.

3. **the appropriateness of the design and operation of City of Calgary website(s) that was used as the vehicle(s) to issue the Special Ballots, including the security of the system(s);**

While there are improvements that might be considered for the website application, the design, operation and security of system and programs were appropriate and were in line with the standards and procedures in use by other jurisdictions today.

4. **the appropriateness of the training provided to the IT staff who developed the website and of the training provided to the City of Calgary election officials, particularly the staff receiving the requests for Special Ballots on the website;**

Both IT staff and election officials were appropriately trained.

5. **the appropriateness of the process used by the City of Calgary to cross-reference between the Special Ballot requests and the voter cards identified in section 2 of the Calgary Election Regulation;**

For electors requesting Special Ballots, the Certificate Envelope served as the voter card. For election day, lists were prepared for each voting subdivision of electors from that voting subdivision who had requested a Special Ballot

package. In most voting subdivisions outside Ward 10, there were one or two electors on the list.

When an elector requested a ballot at a voting station, the deputy would first check the list of Special Ballot applicants. If the elector's name was on the list, the deputy would note on the list the explanation offered by the elector for not using a Special Ballot and would proceed to have the elector complete the voter card.

This seems to be an appropriate process for the normal conduct of an election. It may have been cumbersome for the voting subdivisions in the eastern part of Ward 10 where the majority of the "Suite 307" requests originated.

I am making a recommendation regarding a common Register of Electors for all elections in Alberta.

6. **the performance of all municipal officials and staff involved in the conduct of the election process and the performance of the IT system and programs used in the election process; and**

The performance of all staff involved was commendable. The system performed as expected.

7. **what if any changes are recommended to the Local Authorities Election Act, the Calgary Election Regulation, and the City of Calgary's election policies, procedures, and processes to reduce the risk of irregularities in the election process.**

See RECOMMENDATIONS

FINDING NO. 2 – CAUSE

Many factors provide a context to the irregularity identified in the 2004 Calgary Ward 10 aldermanic election. New legislation, adopting principles of openness, and maintaining the conduct of an election based upon the "honour system" obligated of electors, allowed for access to Special Ballots essentially upon request. The enabling legislation, and the subsequent electoral structure to accommodate for Special Ballots in Calgary, may have been introduced without consideration for security measures directly anticipating mass applications for Special Ballots in suspicious circumstances. Such foresight might have provided more clear guidance to election officials addressing the irregularity. While in the end result impugned ballots were apprehended before they were counted in the election, potentially controverting the result, improvements are suggested in the recommendations below to assist legislators and administrators in future who are faced with similar circumstances. In my opinion, however, to identify these

factors as the cause of the irregularity, rather than merely their context, is an error.

I have been urged by her counsel to find Margot Aftergood, a candidate in the October 2004 Calgary Ward 10 aldermanic election, to be a "victim" of the identified irregularity. She has advised the Inspector that she was not aware of any demand from electors whom she canvassed to use Special Ballots, and knew of no coordination of special mail-in ballot requests from her campaign. I make no finding with respect to the accuracy of this assertion. It may be the case that a candidate can or should have responsibility for the actions of campaign workers and volunteers. Unfortunately, the restrictions imposed by the Court and the issue of summons prevented this Inspection from hearing the evidence of Ms. Aftergood and her campaign workers and others on the matters for which responsibility might be apportioned. As a result, it was not possible to determine what was done and by whom, and the candidate's knowledge of the circumstances.

I am restricted from determining who conceived of and initiated the large scale alleged unauthorized request, completion and submission of Special Ballots on behalf of electors in Ward 10, which matters will be dealt with in the Courts. My jurisdiction does not make it necessary for me to find the candidate vicariously liable for the actions of her campaign workers, so as to determine an election controverted or apply another remedy, as is sometimes the issue before judges who have considered the consequences of elector misconduct.

While an inquiry or an Inspection such as this does not have jurisdiction to assess legal accountability, in the future some consideration should be given to fix by law the responsibility of a candidate for the actions of campaign workers and agents whether or not the candidate is subsequently found to be legally accountable for those actions. In this regard, I note the observations of Commissioner Mawrey, in investigating postal voting irregularities in Birmingham, cited above, that "...a candidate is taken to be responsible for [the] actions [of campaign workers] even though he may not have appointed them as agents. Knowledge of what they are doing does not need to be proved against a candidate for him to be fixed with their actions"[6]. As indicated above, limitations in the terms of reference precluded hearing evidence from Ms. Aftergood or her campaign workers and volunteers or anyone else, that would permit me to weigh all of the evidence and to assess blame against her or others.

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[6] Report of Commissioner Richard Mawrey, Q.C., appointed in the matter of actions commenced by way of petition under the "*Representation of the People Act 1983*", to have elections for Birmingham (England) City Council representatives in the wards of Bordesley Green and Aston, held June 10, 2004, declared set aside, and new elections held.

FINDING NO. 3 - RETURNING OFFICER ACTED APPROPRIATELY

I find that the City of Calgary Returning Officer, Barbara Clifford, acted appropriately in the circumstances.

Whether one agrees with it or not, the philosophy of the *Local Authorities Election Act* is that the Returning Officer is the impartial administrator of local elections. The recourse for an elector or candidate who has concerns regarding the conduct of the election or the activities of any candidate is to the courts.

While I am of the view that the City of Calgary interpreted the provisions of the Act related to accepting applications very narrowly (see FINDING No. 4), the Returning Officer consistently acted within the terms of that interpretation.

The Returning Officer testified that she did not know the source of the "Suite 307" applications since the returned certificate envelopes were not opened. Consistent with the philosophy of the Act, the Returning Officer took the actions within her authority to ensure that the election was conducted properly. The only action available to her was to ensure that the results of the election were not skewed by the questionable Special Ballots, which she did.

FINDING NO. 4 - ACCEPTANCE OF APPLICATIONS

The *Election Act*, *Local Authorities Election Act* and the Calgary Election Regulation all provide that "An application for a Special Ballot may be made ... by an elector to the Returning Officer ...". All three also provide that when an application is received, the Returning Officer must enter the basic information in the appropriate document and send the Special Ballot forms to the applicant. The provisions are compared on the following page.

Calgary officials interpreted these provisions to mean that when an application was received, the forms had to be sent. A check was run with the census data base and the POSSE system to confirm the address, but for website applications there was no required contact with the elector.

By contrast, Provincial Returning Officers will not accept an application made by anyone other than the elector named in the application. If, for example, an application is made "for my mother who is incapacitated and can't get out to a voting station", the Returning Officer will not accept the application without speaking to or receiving written evidence that the mother actually wants a Special Ballot and is on the list of electors. If the mother had not been enumerated, she would be asked to complete an enumeration form in addition to the Special Ballot certificate. In other words, the *Election Act* is commonly understood to be referring to a valid application when it requires the Returning Officer to send out the material.

For all material purposes, the wording of the three legislative instruments is consistent but it is interpreted in significantly different ways. In simple terms, Elections Alberta places primary emphasis on ensuring that the applicant is an elector eligible to request a Special Ballot while Calgary placed primary emphasis on providing forms to the applicant.

In my opinion, the *Local Authorities Election Act* and the Calgary Election Regulation should be interpreted in the same manner as the *Elections Act*. The interpretation should be that the Returning Officer is required to send out a Special Ballot when the Returning Officer is satisfied that a valid application has been received.

ELECTION ACT	***LOCAL AUTHORITIES ELECTION ACT***	**CALGARY REGULATION**
Vote by Special Ballot **116(1)** An elector who is unable to vote at an advance poll or at the poll on polling day on account of (a) physical incapacity, (b) absence from the electoral division, (c) being an inmate, other than an inmate described in section 45(c), (d) being a supervisory deputy Returning Officer, registration officer, deputy Returning Officer or other staff member working in the office of a Returning Officer, poll clerk, interpreter, special constable, candidate, official agent or scrutineer who may be located on polling day at a polling place in a polling subdivision within the electoral division other than that in which the elector is ordinarily resident, (e) being a resident of a remote area designated under section 31, or (f) any other circumstances prescribed by the Chief Electoral Officer, may apply to vote by Special Ballot.	**Vote by Special Ballot** **77.1**(1) An elector who is unable to vote at an advance vote or at the voting station on election day because of (a) physical incapacity, (b) absence from the local jurisdiction, or (c) being a Returning Officer, deputy Returning Officer, constable, candidate or agent who may be located on election day at a voting station other than that for the elector's place of residence may apply to vote by Special Ballot.	**Application to vote by Special Ballot** **6**(1) An elector who is unable to vote at an advance vote or at the voting station on election day because of (a)physical incapacity, (b)absence from the local jurisdiction, or (c)being a Returning Officer, deputy Returning Officer, constable, candidate or agent who may be located on election day at a voting station other than that for the elector's place of residence may apply to vote by Special Ballot.

ELECTION ACT	*LOCAL AUTHORITIES ELECTION ACT*	CALGARY REGULATION
116 (3) On receipt of an application under this section, the Returning Officer or election clerk shall (a) enter in the Special Ballot Poll Book (i) the elector's name and where the elector is ordinarily resident, and (ii) the name and number of the polling subdivision in which the elector resides, and (b) cause the appropriate forms to be provided to the applicant.	**77.1 (3)** On receipt of an application under this section, if the elected authority by resolution before nomination day provides for Special Ballots, the Returning Officer or deputy must (a) enter in the voting register (i) the elector's name and the elector's place of residence, and (ii) the name and number of the voting subdivision for the elector's place of residence, and (b) cause the appropriate forms to be provided to the applicant.	**6 (3)** On receipt of an application under this section the Returning Officer must (a) enter in the Special Ballot request system (i) the elector's name and the elector's place of residence, and (ii) the number of the voting subdivision for the elector's place of residence, and (b) cause the appropriate forms to be provided to the applicant.

FINDING NO. 5 - CONSULTATION WITH CITY COUNCIL re *Danielson v The City of Calgary, Barbara Clifford and Margot Aftergood*

Firstly, I find it unusual that City Council was not consulted prior to presenting the offers to settle the *Danielson v The City of Calgary, Barbara Clifford and Margot Aftergood* action. I can accept the argument offered by the Law Department and the City Manager that there may not have been time to receive City Council approval of the actual settlement. I also accept that making the settlement offer was completely appropriate from a legal point of view. But given the public profile of the case, I believe that City Council should have had the opportunity to approve in principle the concept of offering a settlement and perhaps the parameters of a settlement offer.

The timing reason offered by the city officials is entirely related to the trial commencing at 10:00 a.m. when Council would have been in its strategic planning session. One might have expected then Alderman Aftergood to be at the trial and not at the City Council session. However, even if she had been at the Council session, following the "conflict of interest" procedures, she would have had to declare her interest and leave the room while the matter was being discussed.

Secondly, I find it unusual that the Law Department representatives and the City Manager only offered what I would characterize as vague descriptions of the process involved in either convening a special meeting of Council or adding an item to the agenda of a special meeting.

I find Bylaw 30M2002, the Procedure Bylaw, quite clear on these accounts:

44. If a matter is not specified in the notice of a Special Meeting, it may not be dealt with, unless all members are present and a motion is passed to deal with the matter.

45. Notwithstanding Sections 29(1), 32 and 42, the Mayor may call a Special Meeting of Council, on shorter notice without giving notice to the public, provided Two-Thirds (10) of Members give written consent to holding the Meeting before the Meeting begins. This does not apply to Committees.

These provisions arise from Section 194, *Municipal Government Act*:

(4) A special meeting may be held with less than 24 hours notice to all councillors and without notice to the public if at least 2/3 of the whole council agrees to this in writing before the beginning of the meeting.

(5) No matter other than that stated in the notice calling the special meeting may be transacted at the meeting unless the whole council is present at the meeting and council agrees to deal with the matter in question.

I agree that the provisions for calling a special meeting or adding an item to the agenda of the special meeting already in progress are cumbersome.

However, the Mayor, having been informed of the settlement offer, could have initiated a special meeting, pursuant to Section 45 of the Procedure Bylaw, to seek Council approval in principle for offering a settlement, if all of the councillors had been present. At the very least, Council could have been informed that the City Solicitor was exercising his authority under Bylaw 48M2000 to settle legal proceedings up to $250,000.

RECOMMENDATIONS

During the past six months, a great deal of information regarding elections has been brought to my attention, some of which is not directly related to my terms of reference. Having considered all of this information, I am presenting the following recommendations. Some are directly related to my terms of reference and some are related to elections generally. Some would require the involvement of Elections Alberta in their implementation. I have informed the Chief Electoral Officer of these and have been assured of a willingness to consult with Alberta Municipal Affairs in this regard.

I have purposely phrased most of my recommendations from a policy perspective. Consistent with Recommendation 12, I believe that the exact wording of the provisions of the *Act* and regulations should be the subject of consultation between those experienced in the process and involved in its administration.

1. **The use of Special Ballots in local authority elections should be continued. If the City of Calgary wishes, Calgary's election regulation should continue to authorize website applications for Special Ballots.**

Special Ballots are useful instruments in enabling people to vote who are not able to vote either at the advance vote or on election day. Special Ballots should be continued for local authority elections. They are important for physically incapacitated electors in particular. They are also useful for persons whose work requires them to be absent from the local authority during the election period, students attending an educational institution in another jurisdiction, "snowbirds" and others.

The "Working Committee Report on the Electoral Technology Accord" cited earlier reports that "multi-channel on-line registration" has a high priority for Chief Electoral Officers but that "multi-channel on-line voting", although in place in some other countries, does not enjoy such widespread support. Nevertheless, new technologies will be introduced to the election process in coming years. If the City of Calgary wishes, its election regulation should continue to authorize web-site applications for Special Ballots.

However, before the system is used again, the City should seriously consider the system improvement recommendations discussed in the Professional Systems Ltd. report. The report may be found at Tab 52, Exhibit 9 and the City of Calgary has been provided with a copy of the report.

2. **The *Local Authorities Election Act* should be amended to provide that an elector may be required to provide two pieces of identification when asking to be included in he register or list of electors, requesting a Special Ballot, or swearing in at the voting station.**

The voter identification provisions of the *Election Act* apply to swearing in on polling day. They do not apply to enumeration. Section 95 of the *Election Act* provides that an elector whose name does not appear on the list of electors may vote in a provincial election if the elector produces two pieces of identification and takes and signs the prescribed oath. The acceptable types of identification are set out as:

> *(A) an Alberta motor vehicle operator's license;*
> *(B) an Alberta health insurance card;*
> *(C) a Senior Citizen's Identification Card;*
> *(D) any piece of identification that is acceptable to the registration officer or deputy Returning Officer;*
> *or*
> *if none of the pieces of identification named in (A), (B) and (C) are produced, any 2 pieces acceptable to the registration officer or deputy Returning Officer.*

A similar provision should be included in the *Local Authorities Election Act* and the application of the provision should be extended to permit an election officer to require a person

- asking to be included in the register or list of electors or
- applying for a Special Ballot, whose name is not included in the register of electors or list of electors,

to provide identification. When this is under review, Elections Alberta might consider the same extensions of the application of the provision in the *Election Act*.

3. **The Alberta Municipal Affairs Election Manual should be expanded to provide guidance for municipalities on procedures related to the use of Special Ballots. In particular, this guidance should clarify**

   (a) that a Special Ballot package is required to be issued when the Returning Officer receives a valid application, and

   (b) procedures to be followed regarding multiple applications for Special; Ballots to be sent to the same address.

The 2004 Election Manual produced by Alberta Municipal Affairs provides much useful advice for local authority election officials. The advice on Special Ballots, however, is limited to repeating the provisions of the *Act*. The usefulness of the Manual could be improved if it provided the interpretation advice referred to in Recommendation #2 and also provided advice on procedures to be followed when multiple applications are requested to be sent to the same address. Such applications could be valid, for example, if the address was the location of a facility housing a number physically incapacitated persons who are not able to go to the place where the election is being conducted and where a travelling poll is not going to attend. This, of course, was not the case in the Calgary Ward 10 election. In my view the publicity surrounding this incident is likely to discourage further attempts to abuse the process but local authority Returning Officers should have advice on what to do if some similar circumstance arises in the future.

4. **Elections Alberta should consult with Alberta Municipal Affairs and local authority election officials in discussions with Elections Canada and other jurisdictions regarding sharing information to produce a common register of electors, with the objective of producing a common register of electors for use in all elections in Alberta.**

When the *Local Authorities Election Act* was developed, local authorities were concerned about the rising costs of doing an enumeration to produce a list of electors. Therefore the preparation of a list of electors or a permanent register of electors was made optional. If there is no list or register, all electors attending a voting station swear in when they appear to vote.

The cost concerns still exist for local authorities. I am aware that Elections Alberta is moving towards a permanent register of electors for provincial elections and, in that regard, is discussing with Elections Canada and other jurisdictions sharing information which would be useful in keeping the register current. Sharing data with municipalities is identified as a benefit of "multi-channel on-line registration" in the report of the "Working Committee Report on the Electoral Technology Accord" (a task force of the federal, provincial and territorial election officials)[7].

In my view, the provincial register should be available for use by Alberta local authorities. The existence of a register would facilitate checking the validity of applications for Special Ballots. The availability of a pre-printed register at each voting station would also simplify the administration of elections on election day. In particular, before being provided to the deputy Returning Officers, the names of electors who had requested Special Ballots or who had voted at advance polls could be marked on these registers.

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[7] Electoral Technology Accord (Canada), Working Committee Report on the Electoral Technology Accord, May 2004

Local authority Returning Officers need to be confident that the information in the register is accurate and that it can be accurately categorized according to wards where they exist and according to voting subdivisions. Therefore Alberta Municipal Affairs and local authority election officials should be consulted during the preparation of the provincial register.

5. **The *Local Authorities Election Act* should be amended to provide that a person who is convicted of an offence related to a controverted election under the *Act* is not eligible for nomination for a local authority elected position for 10 years after the date of the conviction and a consequential amendment should be made to prohibit nomination under the *Election Act* for the same period.**

It is my view that the penalties of fine and perhaps imprisonment currently provided under the *Local Authorities Election Act* are not sufficient. A person who is convicted of controverting an election not only causes the cost of a by-election but also contributes to public skepticism regarding the election process itself.

Whether the contravention is in a local or provincial election, in my view, is immaterial. A convicted person should not be eligible to participate as a candidate for at least ten years following the conviction. Because my terms of reference are related to the *Local Authorities Election Act*, I have phrased this recommendation in the context of that Act. I do suggest that the same provisions should be included in both it and the *Election Act*.

It is my intention to write to the registered political parties in Alberta recommending that they amend their nomination qualification provisions to include a similar provision.

6. **The optional procedures offered by Section 84 and Section 160 of the *Local Authorities Election Act* should be continued.**

I agree with the general philosophy that the *Local Authorities Election Act* should set out a standard procedure for local elections and then facilitate either variations of that procedure or alternative procedures where they are more appropriate to the context of a local authority. So I recommend that those options be continued.

Local authorities should ensure, when passing the required Bylaws or requesting the required Regulations, that they address all of the variations or alternatives which they think are required for an effective election process in their jurisdictions. In other words, it is not reasonable for a local authority, which has one of these bylaws or regulations, to blame the provisions of the *Local Authorities Election Act* for any problems they encounter.

7. **Section 77.1(2) of the *Local Authorities Election Act* should be amended to permit applications by email.**

The *Election Act* currently permits applications for Special Ballots to be made by email. In line with my comments about common provisions for elections in Alberta, the *Local Authorities Election Act* should be amended to permit email applications.

8. **Section 86 of the *Local Authorities Election Act* should specify the authority of Returning Officers to reject a ballot which it would be an offence to count under section 149(a)**

As noted by the Calgary Returning Officer, the *Act* currently makes it an offence to count an invalid ballot but there is no authority specified to reject such a ballot.

It would not be in the public interest to give the Returning Officer unfettered authority to reject any ballot. However, such a provision needs to be fairly general in nature since, if it had been drafted in 2003, it would not likely have anticipated the irregularity that occurred in Ward 10 in Calgary in 2004.

9. **The offence provisions should be reviewed to ensure that they are appropriate each time a new election process is introduced.**

It appears to me that the current offence provisions are written in the context of an elector going to a voting station to vote. The provisions should be reviewed now with regard to Special Ballots, and also regularly whenever a new election process is introduced, to ensure that they are relevant to processes other than attendance at a voting station.

10. **Alberta Municipal Affairs should consult with local authority election officials and Elections Alberta throughout the drafting of amendments to the *Local Authorities Election Act*.**

It has been strongly suggested to me that Alberta Municipal Affairs did not consult with local authority election officials regarding the amendments to the *Act* which introduced Special Ballots. Alberta Municipal Affairs agrees that local people were not asked to comment on the actual draft of the Bill which introduced the amendments. However, they were asked for comments following the 2001 local authority elections and it was those comments which led to the amendments.

I recognize the principle of the "privilege of the Legislature" but I would suggest that Members of the Legislative Assembly would be best served if they could be confident that the concerns of persons affected by proposed legislation were

addressed in the draft to the extent possible within the context of the general public interest.

Alberta Municipal Affairs should consult throughout the drafting process with local authority election officials, or their representative organizations, to ensure that the best legislation is recommended.

11. **Alberta Municipal Affairs should work with Elections Alberta to develop common terminology to be used in statutes and regulations governing both provincial and local elections.**

I was struck by the comments during the Community Consultation regarding the confusion which is caused for new Canadians by the use of different terminology for different elections. The same observation can probably be extended to many electors, regardless of where they were born. While the ideal would be to have the same terminology used in federal, provincial and local elections, I can only deal with matters within the purview of the province.

I am recommending, therefore, that Alberta Municipal Affairs work with Elections Alberta to develop common terminology to be used in the statutes and regulations governing both provincial and local elections. The consultation may result in changes in the terminology used in both provincial and municipal elections, which I understand may be difficult to accept for long-time election officials. However, I believe that this effort would facilitate participation in our democratic process.

In addition, I would suggest that there should be automatic consultation between Elections Alberta and Alberta Municipal Affairs whenever amendments to the common provisions are being considered for either *Act*.

12. **Alberta Municipal Affairs should consult with Elections Alberta to ensure that the same interpretations are given by both to commonly worded provisions of the *Local Authorities Election Act* and the *Election Act*.**

As I have noted in the body of this report, there is a major difference in the way that the commonly worded provisions related to applications for Special Ballots are interpreted for provincial elections at least in Calgary, if not for all local authority elections. These provisions ought to be interpreted in the same way.

Alberta Municipal Affairs should consult with Elections Alberta, and the two authorities should reach consensus, to ensure that the same interpretations are provided to both local and provincial election officials. As noted in Recommendation #3 Alberta Municipal Affairs should distribute this interpretation advice through its Election Manual.

13. **Alberta Municipal Affairs and Elections Alberta should encourage local authority Returning Officers and provincial Returning Officers to work together to designate locations to be used as voting stations/polling places for all provincial and local elections. Elections Alberta should work with Elections Canada to have the same locations used for federal elections.**

One source of confusion mentioned by both new Canadians and others is the different locations to which they have to go to vote in the various elections. This issue likely has prominence currently since all three types of elections were held in 2004. I have heard anecdotes from various locations of people going to a school or other community facility where they voted in the previous election, only to find it locked and no signage or other information available about where to go to vote.

Because schools are frequently used as election locations, it may be useful to involve Alberta Learning in these discussions. I am aware that those responsible for the buildings used for elections have some emerging concerns regarding liability. It would be useful if the consultations could seek to address that issue, as well as common locations.

14. **A way should be found to increase the number of election workers who have facility in languages used by electors in areas where a language other than English is in common use.**

Persons with limited fluency in English may not understand the questions asked by enumerators or instructions offered by Deputy Returning Officers or other election officials. This might result in the person unwittingly providing incorrect information or, for example, not understanding that an immigrant may be able to vote at a nomination meeting for a provincial or federal candidate but that does not entitle the person to vote at an election, unless he or she is a Canadian citizen.

Election officials should actively attempt to recruit qualified persons who are fluent in a language other than English to work at the variety of election tasks in areas where the language is in common use.

15. **Alberta Municipal Affairs and Elections Alberta should work with groups like the Ethno-Cultural Council of Calgary to develop educational materials and deliver ongoing education workshops in appropriate languages to inform immigrants on the (municipal and provincial) democratic process in Alberta and similar advertising material for use at election times.**

The community representatives with whom I consulted indicated that one of the barriers they face is that there are no pre-planned dates for provincial elections in

Alberta and federal elections in Canada. There is not time between the issuance of the writ and the polling day for these elections to conduct educational programs. Municipal elections do occur at regular intervals of the third Monday in October every three years but there is no educational program information available in languages other than English which could be used for ongoing educational sessions.

I am aware that election officials in other jurisdictions have seen this type of activity, designed to increase elector turnout as an important part of their mandates. My suggestion is that Elections Alberta should fund this type of activity – the development of the materials, training instructors and covering any costs associated with the educational sessions – and I understand that it may need a budget increase to enable the activity to proceed. The materials should be available in English and other languages so that all interested Albertans could benefit.

16. **The City of Calgary should increase the size of the certificate envelope used for Special Ballot applications in order to make it easier for electors to read.**

Conviction for signing a false statement related to an election carries with it liability "to a fine of not more than $10,000 or to imprisonment for not more than 6 months or to both fine and imprisonment". These are potential serious consequences for an individual elector. It is likely that the elector will be filling in this form at home. Therefore the form should be clear.

For information, the following pages show the Calgary certificate envelope and the certificate envelope used by Elections Alberta. It seems to me that the larger type used on the provincial envelope would be easier for any elector to read but particularly for a person who is visually impaired. It may not be necessary to make the Calgary envelope as large as the provincial one to accomplish this purpose. However I recommend that Calgary increase the size of the envelope it uses in order that the font size may also be increased.

NAME OF ELECTOR | ADDRESS | SCHOOL ELECTOR

OC773 (R2004-06)

THE CITY OF CALGARY
CALGARY BOARD OF EDUCATION
CALGARY ROMAN CATHOLIC SEPARATE
SCHOOL DISTRICT NO. 1

VOTING REGISTER

LOCAL AUTHORITIES ELECTION ACT
(SECTIONS 77.1, 77.2, 77.3)
Calgary Election Regulations O.C 62/2004

ELECTION DAY: OCTOBER 18, 2004

VSD

STATEMENT OF ELECTOR ELIGIBILITY: Part 1

I am the elector named above and the address and school elector is correct. I am eligible to vote at the above election because:

- I have not voted before in this election;
- I am 18 years of age or older;
- I am a Canadian citizen; and
- I have resided in Alberta since 2004 April 18.

I certify that I am qualified to vote under sections 77.1-77.3 of the Local Authorities Election Act because I am unable to attend in person on election day or at the advance voting station by reason of

Check One:

☐ Physical Incapacity ☐ Absent from Jurisdiction ☐ Election Officer, Candidate or Agent

IT IS AN OFFENCE TO SIGN A FALSE STATEMENT

I declare that the statements are true.

_____
SIGNATURE OF ELECTOR

Dated at _____, this _____ day of _____, 2004
(Mailing Address for special ballots, including postal code)

TO BE COMPLETED BY RETURNING OFFICER OR DEPUTY: Part 2

Accept

☐ Name recorded above is found in the Special Ballot Request System.
☐ Part 1 is properly completed.

Decline

☐ Part 1 is not properly completed.
☐ Received after the close of voting stations on election day.
☐ Other _____

Date/Time Received

Initials of DRO

Note: This personal information is collected under the authority of the Local Authorities Election Act and will be used for purposes under that Act. It is protected by the privacy

Chief Electoral Officer
Alberta

Election Act
(CEO-EL-03-48

Special Ballot Certificate Envelope

Electoral Division _____ Polling Subdivision Number _____

Number from Poll Book _____

_____
(Print First Name, Middle Initial and Surname of Elector)

_____
(Address of Ordinary Residence, including Postal Code, within Electoral Division)

Part I

To be completed by Elector

I certify that I am a qualified elector by virtue of being:

- a Canadian citizen;
- 18 years of age or older;
- ordinarily resident in the Province of Alberta for at least the immediately preceding 6 months; and
- ordinarily resident in the polling subdivision in which I wish to vote.

I certify that I am qualified to vote under the Election Act because I am unable to attend in person on polling day or at the advance poll by reason of being:

Check one

- ☐ Physically incapacitated
- ☐ Absent from the Electoral Division
- ☐ An inmate sentenced to a term of 10 days or less, or for the non-payment of a fine
- ☐ Other (specified by Chief Electoral Officer) _____
- ☐ An Election Officer
- ☐ A Candidate, Official Agent or Scrutineer
- ☐ A resident of a Remote Area

I declare that the above statements are true and that I have not previously voted at this election.

Dated at _____
(Address, including Postal Code, where Special Ballot Certificate Envelope is received)

This _____ day of _____, _____
(Date) (Month) (Year)

_____
(Signature of Elector)

Part II

To be completed by Returning Officer, Election Clerk or Administrative Assistant

CHECK:

- ☐ Name of individual recorded on front of envelope is on the List of Electors for the electoral division and polling subdivision.
- ☐ Name of the individual recorded on the front of the envelope is recorded in the Special Ballot Poll Book.
- ☐ Part I is properly completed.
- ☐ Special Ballot Certificate Envelope **IS** accepted.

OR

Special Ballot Certificate Envelope **IS NOT** opened because:

- ☐ Part I is not properly completed;
- ☐ Received after the close of polls on polling day; or
- ☐ Other (Specify) _____

_____ (Date)

_____ (Signature of Returning Officer, Election Clerk or Administrative Assistant)

INTRODUCTION OF SPECIAL BALLOTS

The traditional practice in Alberta has been that following each triennial local election, the *Local Authorities Election Act* is reviewed and any appropriate amendments are drafted. A Bill is presented for consideration by the Legislative Assembly and eventually amendments are enacted, usually at least a year in advance of the next general local elections.

The amendments introduced in 2003 Bill 31 and eventually enacted included the following:

Vote by Special Ballot

77.1(1) An elector who is unable to vote at an advance vote or at the voting station on election day because of

(a) physical incapacity,

(b) absence from the local jurisdiction, or

(c) being a Returning Officer, deputy Returning Officer, constable, candidate or agent who may be located on election day at a voting station other than that for the elector's place of residence

may apply to vote by Special Ballot.

(2) An application for a Special Ballot may be made

(a) in writing,

(b) by telephone,

(c) by telecopier, or

(d) in person,

by an elector to the Returning Officer of the elector's local jurisdiction at any time between the notice of election day and the closing of voting stations on election day.

(3) On receipt of an application under this section, if the elected authority by resolution before nomination day provides for Special Ballots, the Returning Officer or deputy must

(a) enter in the voting register

(i) the elector's name and the elector's place of residence, and

(ii) the name and number of the voting subdivision for the elector's place of residence, and

(b) *cause the appropriate forms to be provided to the applicant.*

(4) The Returning Officer must, on request, make available to any candidate or a candidate's agent in the voting substation the names and addresses of those electors in the voting substation who have applied for and been provided with the appropriate forms under this section. 2003 c27 s27

Voting by Special Ballot

77.2(1) On receipt of the appropriate forms pursuant to section 77.1(3), the elector must vote by writing, in legible printing in the space provided, the name of the candidates of the elector's choice, but if there is to be a vote on a bylaw or question, the wording must be determined in accordance with section 44 and be supplied as part of the appropriate forms.

(2) After marking the appropriate forms, the voter must
(a) place them in the ballot envelope,
(b) seal the ballot envelope,
(c) place the ballot envelope in the certificate envelope,
(d) complete and sign Part 1 of the certificate and seal the certificate envelope,
(e) place the certificate envelope in the outer envelope, and
(f) seal the outer envelope.

(3) The outer envelope, when sealed, must be forwarded so that it reaches the Returning Officer not later than the close of the voting station on election day.

(4) On receipt of the outer envelope, the Returning Officer must remove the certificate envelope and determine
(a) whether the name on the certificate envelope is the same as that of an individual already recorded in the voting register under this section, and
(b) whether Part 1 of the certificate is properly completed.

(5) On determining that the voter is recorded in the voting register and whether Part 1 of the certificate is properly completed, the Returning Officer must,
(a) if the Returning Officer is satisfied that Part 1 of the certificate is properly completed,
(i) sign Part 2 of the certificate,
(ii) if the elector's name appears on the list of electors for the voting station in which the elector is entitled to vote, enter opposite the name of that person on the list of electors the word "special",
(iii) if the elector's name does not appear on the list of electors for the voting station in which the elector is entitled to vote, enter the elector's name on the list of electors and, opposite the name, the word "special",
(iv) record in the voting register in the appropriate column the date and time the Returning Officer received the certificate envelope,
(v) open the certificate envelope, remove the sealed ballot envelope and place the sealed ballot envelope in a sealed ballot box marked "Special Ballot", and
(vi) enter in the voting register, in the appropriate columns, the word "voted" and the reason for using the Special Ballot, that is, physical incapacity, absence, election officer, candidate or agent, or

(b) if the Returning Officer is not satisfied that Part 1 of the certificate is properly completed,
(i) retain the certificate envelope unopened,
(ii) treat the ballot in the envelope as a rejected ballot, and
(iii) mark the certificate envelope accordingly.

(6) At the close of the voting station on election day, the Returning Officer must deliver the Special Ballot box to the deputy of the voting station of the electors who have voted under this section in the local jurisdiction and advise the deputy of the names of the electors who have so voted, and the deputy must proceed in accordance with section 85 as if the ballot box were from an advance poll.

(7) After completing the count of the ballots, the deputy must record the results on the prescribed form. 2003 c27 s27

Late receipt of Special Ballot

77.3 If an outer envelope is received by a Returning Officer after the close of the voting station on election day, the ballot it contains must be considered a rejected ballot and the outer envelope must be retained unopened by the Returning Officer, who must record on it the reason for its rejection. 2003 c27 s27

The City of Calgary decided that it would like to use Special Ballots in the 2004 election but that some variations in the legislative provisions would assist with the administration of the Calgary election

Section 160 of the Act provides that:

160 (1) Notwithstanding anything in this Act, the Lieutenant Governor in Council may make regulations

(a) prescribing a system for the conduct and procedure of an election or vote that is not provided for in this Act or that is a modification of a system under this Act"

The City of Calgary requested a Section 160 order and Order in Council 62/004 granted the request and the Calgary modified system became Alberta Regulation 31/2004. This order included the following provisions:

Special Ballot provisions

5 *Sections 6 to 8 apply instead of section 77.1 to 77.3 of the Act in the case of an election in the City of Calgary.*

Application to vote by Special Ballot

6(1) An elector who is unable to vote at an advance vote or at the voting station on election day because of

(a) *physical incapacity,*

(b) *absence from the local jurisdiction, or*

(c) *being a Returning Officer, deputy Returning Officer, constable, candidate or agent who may be located on election day at a voting station other than that for the elector's place of residence*

may apply to vote by Special Ballot.

(2) An application for a Special Ballot may be made

(a) *in writing,*

(b) *by telephone,*

(c) *by telecopier,*

(d) *electronically on-line through the City of Calgary website, or*

(e) *in person,*

by an elector to the Returning Officer at any time between July 1 in the year of a general election and 4:30 p.m. on election day or, in a case other than a general election, between the date on which notice of nomination day is first given and 4:30 p.m. on election day.

(3) On receipt of an application under this section the Returning Officer must

(a) *enter in the Special Ballot request system*

(i) the elector's name and the elector's place of residence, and

(ii) the number of the voting subdivision for the elector's place of residence, and

(b) *cause the appropriate forms to be provided to the applicant.*

Voting by Special Ballot

7(1) On receipt of the appropriate forms pursuant to section 6, the elector must vote by writing, in legible printing in the space provided, the name of the candidate of the elector's choice, and if there is to be a vote on a bylaw or question, the wording is to be determined in accordance with section 44 of the Act and be supplied as part of the appropriate forms.

(2) After marking the appropriate ballots, the voter must

(a) place them in the ballot envelope,

(b) seal the ballot envelope,

(c) place the ballot envelope in a certificate envelope that is in a form that is acceptable to the Returning Officer,

(d) complete and sign the certificate and seal the certificate envelope,

(e) place the certificate envelope in the outer envelope, and

(f) seal the outer envelope.

(3) The outer envelope, when sealed, must be forwarded so that it reaches the Returning Officer not later than the close of the voting station on election day.

(4) On receipt of the outer envelope, the Returning Officer must remove the certificate envelope and determine

(a) whether the name on the certificate envelope is the same as that of an individual already recorded in the city's Special Ballot request system, and

(b) whether the certificate is properly completed.

(5) On determining that the voter is recorded in the Special Ballot request system and whether the certificate is properly completed, the Returning Officer must,

(a) if the Returning Officer is satisfied that the certificate is properly completed,

(i) initial the voting register,

(ii) record in the Special Ballot request system the date and time the Returning Officer received the certificate envelope, and

(iii) open the certificate envelope, remove the sealed ballot envelope and place the sealed ballot envelope in a sealed ballot box marked with the voting station number of the Special Ballot voting station,

or

(b) if the Returning Officer is not satisfied that the certificate is properly completed,

(i) retain the certificate envelope unopened,

(ii) treat the ballot in the envelope as a rejected ballot, and

(iii) mark the certificate envelope accordingly.

(6) At the close of voting on election day the Returning Officer must deliver the Special Ballot box, the completed certificate envelopes and the unopened rejected certificate envelopes to the presiding deputy of the Special Ballot voting station.

(7) After completing the count of the ballots, the deputy must record the results on the prescribed form.

Designated officer may act

8 Where sections 6 and 7 confer a power or impose a duty of the Returning Officer, the power may be exercised and the duty may be carried out by a designated deputy.

LIST OF WITNESSES
(in order of appearance)

March 21
Barbara Clifford, Returning Officer, City of Calgary

March 22
Barbara Clifford
Sue Thompson, Management Systems Analyst, City of Calgary

March 23
Barbara Clifford
Sue Thompson
Barbara Webb, Presiding Deputy Returning Officer, Special Ballots
Mike Siewert, Programmer/Analyst, City of Calgary

March 24
Randy Edwards, Professional Systems Inc.

April 21
Andrew Pipes, Constable, Calgary Policy Service
Wanda Seatter, Assistant Returning Officer, City of Calgary
James Maxim, former federal candidate, Calgary East
Robert Nanke, IT Security Coordinator, City of Calgary

April 22
Brand Inlow, Solicitor, Law Department, City of Calgary
Paul Tolley, City Solicitor, City of Calgary
Owen Tobert, City Manager, City of Calgary

WITNESSES INTERVIEWED BUT NOT CALLED
Margot Aftergood, former Ward 10 Alderman
David Aftergood, husband of Margot Aftergood
Ron Aftergood, brother of David Aftergood
Dr. Huan Nguyen, physician
Son Xuan Nguyen, H&S Data Computing Services Ltd.
Anh Pham, data entry operator
Thanh Kim Pham, computer programmer analyst
Minh Ngoc Vuong, My Phuong Subs

LIST OF COUNSEL

Inspection Counsel
David Wachowich

City of Calgary Counsel
Patrick Peacock Q.C.

Aftergood Counsel
Ivan Bernardo
Dale Fedorchuk

ASSISTING WITH COMMUNITY CONSULTATION
Marichu Antonio
Cesar Calla
Andre Chabot
Vinay Dey
Kyle Fawcett
Inayat Jetha
Dr. Vettivelu Nallainayagam
Hieu Ngo
Anne-Marie Pham
Dr. Lloyd Wong
Teresa Woo-Paw

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2. News release dated December 14, 2004 "Provincial Inspection Will Proceed Into Calgary's Ward 10 Election"
3. Ministerial Order No. L:182/04 dated December 29, 2004 "The Terms of Reference of the Inspection"
4. Press Release dated January 24, 2005, commencement of Inspection
5. History of inquiries (A: Duration; B: Costs)
6. Proposed schedule of proceedings for March 21 to 24, 2005
7. Page 9, Professional Systems Ltd. report dated March 18, 2005
8. Display map of Ward 10

Exhibit 9, Volume 1, Marked March 21, 2005
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9.
1. Curriculum Vitae of Barbara E. Clifford (2 pages)
2. Exempt Job Evaluation Questionnaire (JEQ), Barbara Clifford (7 pages)
3. City of Calgary Bylaw Numbers 73M94 and 26M97 (4 pages)
4. Calgary Municipal Elections under Barbara Clifford (1 page)
5. City of Calgary Report of Commissioners dated November 19, 1990 (3 pages)
6. AMCA Municipal Election Results, December 29, 2004 (17 pages)
7. Correspondence from Diana Garner to Mayor David Bronconnier dated February 8, 2005 re Survey Results – Election (2 pages)

7A. Internet Voting Experience in Markham "Online access fails to boost voter turnout" (2 pages)

8. Election Statistics (based on Mayor) 1974 to 2001 (4 pages)
9. 2004 General Election Voter Turnout Statistics (3 pages)
10. *Insight into Government*, with Provincial Summary of November 22, 2004 General Election Official Results (3 pages)

11. City of Calgary Business Unit Executive Report prepared by Barbara Clifford March 2003 (77 pages)

12. Municipal Election Voter Turnout, March 5, 2003 (5 pages)

12A. City Clerk's report re "CPS2003-24 Municipal Election Voter Turnout" dated March 28, 2003 (1 page)

12B. The CRIC Paper "*Voter Participation in Canada: Is Canadian Democracy in Crisis?*" October 2001 (52 pages)

13. Summary of Amendments to the *LAEA* dated June 15, 1999 (21 pages)

14. Comments from the City of Calgary re Bill 31 dated April 17, 2003 (5 pages)

15. Schedule of Changes made by the Province of Alberta to *LAEA* dated May 16, 2003 (5 pages)

16. Excerpt from Alberta Hansard, Internet search printout dated April 22, 2003 (8 pages)

16A. Email from Steve Thompson to various addressees including Barbara Clifford re AMCA Comments on Bill 31 dated April 28, 2003 with attached schedule "Comments Considered of "Major" Concern to the Association's Membership (13 pages)

17. City of Calgary Business Unit Executive Report prepared by Barbara Clifford dated September 12, 2003 (12 pages)

17A. Mail-in ballot implementation expenses – invoice from City I.T. Department dated December 22, 2004 (3 pages)

17B. Mail-In-Voting Budget Breakdown (1 page)

18. Documents re Adoption of Alberta Regulation *LAEA* Calgary Election Regulation (28 pages)

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18A. Management Systems Support Analyst job profile, revised September 2001 (3 pages)

18B. Mail-In Request System from Barbara Clifford to Sue Thompson, undated (5 pages)

18C. Elections Mail-In Request, Product Requirements Document for Election – Mail In Request, Version 1.0 dated March 22, 2004 (13 pages)

18D. Minutes of Delivery Review Meeting, May 5, 2004 (2 pages)

18E. Barbara Clifford comments on test website pages to Sue Thompson dated May 13, 2004 (6 pages)

18F. Test Portal – Mail In Request Test (4 pages)

18G. Expurgated Access List (22 pages)

18H. Error screen forwarded from Barbara Webb to Sue Thompson, October 7, 2004 (1 page)

18I. Confirmation of request to fix and updating of server following duplicate dated October 7, 2004 (2 pages)

18J. Mail-In Request Queries, November 23, 2004 (1 page)

19. *LAEA* forms (32 pages)

20. Request for Mail-In Special Ballot Package (1 page)

21. Exemplar Ballot forms (12 pages)

22. The City of Calgary General Election Ward 10 Questions and Answers for Electors (47 pages)

22A. The City of Calgary By-Election Ward 10 Questions and Answers for Electors (16 pages)

23. Advertisements for newspapers (5 pages)

23A. PDRO Manual, City of Calgary Elections PDRO Instruction Manual dated October, 2004, excerpt (21 pages)

24. Maps (3 pages)

24A. Ward 10 boundaries 1989 (2 pages)

25. Enumerated Electors schedule dated September 13, 2004 (2 pages)

25A. Enumeration Manual, City of Calgary Enumeration for 2004 Municipal General Election Instruction Manual, February 2004 (31 pages)

25B. Number of census takers on Ward 10 (1 page)

26. Voting Register prepared following enumeration (Form 8) (1 page)

27. Returning Officer's Duties, Nomination Day, September 20, 2004 (2 pages)

28. Candidate's Handbook, excerpts (15 pages)

29. Election Bylaws, Handbook for Candidates, General Election October 18, 2004 (2 pages)

29A. Nomination Paper for Margot Eleanor Aftergood, executed September 20, 2004 (3 pages)

29B. Confirmation of nomination paper pickup (1 page)

29C. Material List, Nomination Day, September 20, 2004 (2 pages)

29D. Candidate Material Handout, Nomination Day, September 20, 2004 (1 page)

30. Ward 10 Aldermanic Mail-In (Special) Ballots schedule (3 pages)

30A. Exemplar Ballot Account (Ward 1), October 18, 2004 (1 page)

31. Statement of Barbara Clifford for the period September 28 through October 18, 2004 (7 pages)

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32. Barbara Webb, Retainer Letter, September 3, 2004; Training Notice; Notice to PRDOs about Mail-In Ballots, October 14, 2004 (3 pages)

33. PDRO Training Manual 2004 (79 pages)

34. 9 photos (5 pages)

35. Barbara Webb job application dated August 5, 2004 and Résumé (2 pages)

36. Barbara Webb job description, Municipal Secretary, Town of Okotoks (5 pages)

37. Barbara Webb statement November 15, 2004 (4 pages)

38. Barbara Webb Timetable September 8th to October 15th, 2004 (1 page)

39. Completed, Received, Declined voting registers (12) (12 pages)

40. 5 sets of return envelopes, voting registers, ballot envelopes, and ballots (2) (15 pages)

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41. Ward 10 Profile

42. Candidate Handbook, (excerpts) October 18, 2004

43. City Clerk's Department Translation Booklet Census Questions

44. Ballot Account and Results of Vote for Alderman Ward 10

45. City of Calgary Voter Turnout, prepared by Barbara Clifford

46. 05 Census District Statistics, prepared by Barbara Clifford

47. Notice of Motion, Danielson v, Calgary, Clifford and Aftergood, Action 0401-16739

48. Mail-In (Special) Request Website backend

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49. Mike Siewart, Curriculum Vitae

50. Email from Sue Thompson, dated February 27, 2004

51. Email string, dated October 4, 2004 re Production Incident #1

52. Professional Systems Ltd, Report March 18, 2005

53. Stephen Parr Curriculum Vitae

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54. Randy Edwards résumé

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10. Certificate envelopes, receipt, objection, rejection – 2 volumes **SEALED**

11. Mail-in Requests Received VSD 1001-1009 – 2 volumes **SEALED**

12. List distributed to PDROs – 2 volumes **SEALED**

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13. Examinations of David Aftergood held March 1st and March 4th, 2005 (481 pages) (see separate binder)

14. Examinations of Ron Aftergood held February 24th, March 7th, March 10th, April 12th, 2005 (472 pages) (see separate binder)

15. Examination of Thanh Pham held April 8, 2005 (192 pages) (see separate binder)

16. Examination of Son Xuan Nguyen held April 11, 2005 (220 pages) (see separate binder)

17. Examination of Anh Pham held April 11, 2005 (93 pages) (see separate binder)

18. Examination of Minh Ngoc Vuong held April 12, 2005 (47 pages) (see separate binder)

19. Examination of Dr. Huan Nguyen held April 14, 2005 (49 pages) (see separate binder)

20. vacant

21. vacant

DAVID AFTERGOOD EXAMINATION UNDER OATH – EXHIBITS

22. Margot Aftergood Election Brochure (2)

23. Margot Aftergood Election Campaign Card (3)

24. File folder containing various name lists for Margot Aftergood Election signs (5)

25. List entitled "Installed Sign Locations" dated October 15th (6)

26. Handwritten notes entitled "Polls" (7)

27. Margot Aftergood Campaign Financial Statements dated January 25, 2005 (8)

28. Campaign Expenses – invoices and receipts received from accountant (answer to undertaking 6) (11)

29. *Local Authorities Election Act*, ss. 77.1, 77.2 (20)

30. *Local Authorities Election Act*, s. 148 (21)

31. 3 exemplar completed voting registers numbers 344, 312, 150 ("square block lettering") * (22)

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37. Oath of Agent – Susan Knapp, Tom Shrake, Frank Warkentin (2)

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38. Customer Display from Shaw Cable in the name of Vo, T, Thanh at 37 Aberdare Road N.E., for account number 031-4147-6723 in the amount of $45.96 (1)

39. City of Calgary website pages to request (Special) Mail-In Ballots, 4 pages (2)

40. Document from Shaw Cable entitled "Payment Telephone Bank" dated May 8th through September 20th, 2004, showing debit for high-speed internet (3)

41. Shaw Cable invoice addressed to Pacific Lottery Corporation for account 31-4147-6723 in the sum of $45.96 (4)

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43. Map of Ward 10 (6)

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44. Corporate Registry search on H & S Data Computing Services Ltd. (1)

45. Candidate Information City of Calgary General Election handbook, pp. 4-4 to 4-5, cover (2)

46. Son Nguyen handwriting sample (3)

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47. Minh Vuong handwriting sample (3)

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48. Expurgated ACCESS List, first names included (22 pages)

OTHER

49. Ward 10 Alderman mail-in ballots (partial)

50. Ward 10 Mayor mail-in ballots (partial)

51. Complete set of Alderman/Mayor special mail-in ballots, Ward 10

52. CPS Elector Questionnaires – Binders 1, 2, 3

53. Voting Register/CPS Interview Signature Comparisons

54. Constable Pipe's Investigative Log Summary

55. Voting Register - T.Q.D. - GB1529 **SEALED**

56. Election Questionnaire – T.Q.D. dated November 9th, 2004 **SEALED**

57. Voting Register – Y.H. – GB1714 **SEALED**

58. Voting Register – Y.H. – GB1726 **SEALED**

59. Election Questionnaire – Y.H. dated November 3rd, 2004 **SEALED**

60. Voting Register – A.N. – GB1629 **SEALED**

61. Election Questionnaire - A.N. dated November 3rd, 2004 **SEALED**

62. Voting Register – P.F.T. – GB1170 **SEALED**

63. Witness Statement - P.F.T. dated December 23rd, 2004 **SEALED**

64. Voting Registers – GB1001B-GB1885B

65. Statement of Wanda Seatter, marked received May 15th, 2005

65A. List of 1,266 entry pattern review

66. LPCA Calgary East membership list, January 30th, 2004 **SEALED**

67. James Maxim Calgary East election day telephone list, by poll **SEALED**

68. James Maxim List – Polls and Polling Stations, 16/04/2005 **SEALED**

69. James Maxim list – Ethnic Names Query – 16/04/2005 **SEALED**

70. James Maxim Résumé

71. Robert Nanke Statement, dated December 3rd, 2004

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72. Bylaw 48M2000

73. *LAEA* Sections 139-142

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74. Transcript of proceeding before Justice Brooker (Reasons) April 18, 2005

75. Map of Ward 5 resident mail-in ballot requestors, transposing Ward 10 in Calgary Montrose boundaries

76. *LAEA* Part 2 ss. 36-85 re Voting procedures

77. Correspondence to Inspector from Hung Pham, MLA for Calgary Montrose, dated May 30, 2005, with attachments

78. Q.D.I. Questioned Document Investigations Ltd. report dated May 31, 2005 distributed by counsel for Aftergoods June 1, 2005

WRITTEN SUBMISSIONS

Written submissions were received from:

Advisory Committee on Accessibility (ACA), Letter expressing importance of Mail –in ballot to the disabled and elderly dated April 19, 2005

Alberta Municipal Clerks Association (copy of a submission made to Alberta Municipal Affairs)

Nguyen Bich "Proposal for a forum/town hall meeting for Vietnamese Canadian voters"

Citizens for the Protection of Voters Integrity

Barbara Clifford "Amendments to the Local Authorities Election Act, City of Calgary – Returning Officer's Suggestions April 2005

Diane Danielson "Meeting with Calgary Vietnamese Groups

Institute for Public Sector Accountability "Municipal Electoral Reform, An analysis"

Hung Pham MLA

Richard M. Puckridge "An Independent Investigation in the 2004 Calgary Municipal Election Campaign Funding Returns"